

EXHIBIT 34

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Attorney for Cleopatria Martinez

**BEFORE THE GOVERNING BOARD OF THE
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT**

Maricopa County Community College
District,
v.
Cleopatria Martinez.

**CLEOPATRIA MARTINEZ'S
PROPOSED FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

Pursuant to the Hearing Committee's Order of November 18, 2013,
Professor Cleopatria Martinez submits the following Proposed Findings of Fact,
Conclusions and Recommendations:

FINDINGS OF FACT:

Factual Background

1. Cleopatria Martinez was born on April 21, 1948 in Las Vegas, New Mexico and is sixty-five years-old.
2. Professor Martinez moved to Denver, Colorado as a child and attended the Denver Public Schools.
3. Upon graduating from high school in 1966, Professor Martinez attended the University of Denver on a scholarship.
4. Upon earning a baccalaureate degree in mathematics from the

1 University of Denver in 1971, Professor Martinez taught mathematics
2 full-time in the Denver Public School system for approximately four
3 years.

4
5 5. Professor Martinez started teaching mathematics full-time at Denver
6 Community College in 1974.

7
8 6. While still teaching mathematics full-time for Denver Community
9 College, Professor Martinez enrolled in graduate school at the
10 University of Colorado at Boulder and was awarded a Masters of Arts
11 in Education in 1976.

12
13 7. While still teaching mathematics full-time for Denver Community
14 College, Professor Martinez enrolled in a doctoral program at the
15 University of Colorado at Boulder and was awarded a Ph.D in
16 Bilingual Mathematics Education in 1985.

17
18 8. After having taught mathematics full-time for ten years at Denver
19 Community College, Professor Martinez moved to Arizona and
20 started teaching mathematics full-time at Scottsdale Community
21 College on January 1, 1985.

22
23 9. Professor Martinez voluntarily transferred to Phoenix College in 1995
24 and has been teaching mathematics there full-time ever since.

25
26 10. Professor Martinez elected to voluntarily transfer to Phoenix College
27 because there were very few minority students attending Scottsdale
28 Community College, and she wanted to use her bilingual education
skills in the mathematics classroom to better educate the large

number of minority students attending Phoenix College.

11. Professor Martinez was elected by her colleagues to serve as the Chairperson of the Mathematics Department of Phoenix College from 2002 to 2005.

12. Professor Martinez has devoted her entire professional life to classroom teaching, and she continues to intensely love her profession after over forty-years in the classroom.

Alleged Copyright Violations

13. During her twenty-eight years of teaching mathematics in the MCCCDC system, Professor Martinez testified that she and her colleagues in the Mathematics Departments of both Scottsdale Community College and Phoenix College have routinely borrowed math problems from other mathematicians to use in their student handouts for educational purposes on a not for profit basis.

14. Professor Martinez testified that this is a longstanding, widespread custom throughout the District and academia at large.

15. No witness contradicted Professor Martinez's hearing testimony in this regard.

16. Professor Martinez testified that she has read the Copyright Act of 1976 and believed that it authorized her to use small portions of other scholars' work under the "Fair Use" doctrine because she was using it only for classroom teaching purposes on a not for profit basis and her use of the material did not undermine the potential market for the

1 other scholar's work.

2 17. Under the "Fair Use" doctrine of the Copyright Act, the "use of a
3 copyrighted work . . . for purposes such as criticism, comment, news
4 reporting, teaching (including multiple copies for classroom use),
5 scholarship, or research, is not an infringement of copyright." 17
6 U.S.C. § 107 (emphasis added).
7

8 18. In January 2010, the Administration at Phoenix College contacted
9 Professor Martinez with concerns that some of her classroom
10 teaching materials might violate federal copyright laws.
11

12 19. No one ever accused Professor Martinez of violating copyright law
13 before January 2010, although she has been teaching since 1971.
14

15 20. The Administration's concerns focused on four sets of Professor
16 Martinez's lecture notes (see District Exhibit 6, parts 1-4) that
17 Professor Martinez copied for her students to use during class so
18 they could concentrate on her classroom instruction instead of
19 concentrating on taking notes in class.
20

21 21. Professor Martinez used three of the four packets of lecture notes in
22 the Spring of 2010 in two pre-calculus classes. See District Exhibit 6,
23 parts 1-3.
24

25 22. Two of the four packets of the lecture notes contained some
26 mathematics problems that Professor Martinez copied from a
27 mathematics textbook ("Precalculus" by Sullivan and Sullivan) that
28 she had assigned to her students in the previous semester (Math

187, Fall 2009), but had not assigned to her students that particular semester (Math 182, Spring 2010). See District Exhibit 6, parts 1-2.

23. The percentage of the material in the first two handouts that Professor Martinez had copied from the Sullivan and Sullivan Precalculus textbook consisted of less than .5 percent of the textbook.

24. Professor Martinez used the third set of lecture notes in another one of her mathematics classes ("Basic Arithmetic," Math 082) in the Spring Semester of 2010. See District Exhibit 6, part 3.

25. The third set of lecture notes consisted of materials primarily authored by Professor Martinez, with some of the math problems obtained from her colleagues in the Mathematics Department at Phoenix College.

26. According to the Administration's expert witness, Sean Garrison, the third set of lecture notes appear to have 13 math problems copied from two other math textbooks.

27. Professor Martinez did not copy any material for inclusion in the third set of lecture notes from a textbook, but (as noted above) obtained some of the math problems in the notes from a colleague in the Mathematics Department.

28. Apparently 13 of the math problems out of approximately 1000 math problems (just over 1.0%) were copied from two math textbooks.

29. The fourth set of lecture notes consisted exclusively of materials that

1 Professor Martinez had independently authored. See District Exhibit
2 6, part 4.

3 30. Professor Martinez had planned to use the fourth set of lecture notes
4 in the Fall Semester of 2010 (Math 187), but did not do so in light of
5 the Administration's concerns that the notes might contain
6 copyrighted materials.

7
8 31. The Administration's expert witness, Sean Garrison, did not conclude
9 that the fourth set of Professor Martinez's lecture notes violate
10 copyright law. See District Exhibit 6, p. 0002.

11
12 32. Professor Martinez has not used any of the four sets of lecture notes
13 since the Spring of 2010 when the Administration first raised its
14 concerns regarding the notes.

15
16 33. In fact, as noted above, Professor Martinez never used the fourth set
17 of lecture notes.

18 34. In the Spring of 2010, Professor Martinez sought guidance regarding
19 copyright requirements from her superiors at Phoenix College.

20
21 35. Professor Martinez's superiors directed her to confer with the librarian
22 of Phoenix College.

23 36. When Professor Martinez met with the librarian, the librarian told
24 Professor Martinez that Professor Martinez knew as much about
25 copyright law as she did.

26
27 37. Professor Martinez also sought guidance regarding copyright from
28 Margaret McConnell, a lawyer employed by MCCCDC who does not

1 practice in the area of copyright law.

2 38. Ms. McConnell told Professor Martinez that she needed to use the
3 textbook of whatever author she was copying materials from in order
4 not to violate copyright law.
5

6 39. However—in contrast to Ms. McConnell—the Administration's own
7 expert witness, Sean Garrison, testified that under the "Fair Use"
8 doctrine, someone could lawfully copy from a copyrighted textbook
9 without either using or purchasing the textbook.
10

11 40. Accordingly, the legal guidance that Margaret McConnell provided
12 Professor Martinez was incorrect.

13 41. Professor Martinez also sought guidance regarding copyright
14 requirements from the District's General Legal Counsel, Lee Combs.
15

16 42. However, Mr. Combs refused to speak with Professor Martinez,
17 claiming that he represented the District, not Professor Martinez.
18

19 43. Professor Martinez also sought and obtained the written permission
20 of the publisher of the textbook, Sullivan & Sullivan's "Precalculus," to
21 copy materials from their book after the Administration accused her of
22 violating copyright law.

23 44. Because Professor Martinez was not able to obtain reliable guidance
24 regarding copyright compliance from the District, she sought advice
25 from a private intellectual property attorney regarding the issue, Mr.
26 Frederic Bellamy.
27

28 45. Mr. Bellamy is a graduate of Harvard College and Harvard Law

1 School and has been practicing in the area of intellectual property law
2 (including copyright) for over twenty-five years.

3 46. Mr. Bellamy reviewed the first two sets of Professor Martinez's lecture
4 notes and concluded that they did not violate copyright law because
5 they fell under the "Fair Use" doctrine.
6

7 47. Mr. Bellamy based his conclusion that Professor Martinez did not
8 violate copyright law on the fact that the portion of material that
9 Professor Martinez copied from the Sullivan & Sullivan Precalculus
10 textbook was very small, that she used the copied materials
11 exclusively for educational purposes without any profit motive, that
12 the content of the copied material consisted of math problems that
13 are largely not subject to copyright in the first place, and that the
14 small portion of the textbook that Professor Martinez copied did not
15 adversely impact the potential market for the textbook.
16
17

18 48. Mr. Bellamy did not charge Professor Martinez a fee for his services
19 because he thought the Administration's claim that Professor
20 Martinez was violating the federal copyright laws was extremely
21 unfair, in addition to being incorrect.
22

23 49. Another lawyer practicing in the area of intellectual property law,
24 Sean Garrison, testified on behalf of the Administration. In contrast
25 to Mr. Bellamy, Mr. Garrison testified at the hearing that the first three
26 sets of Professor Martinez's lecture notes violated copyright law.
27

28 50. Mr. Garrison did not testify that the fourth set of Professor Martinez's

1 lecture notes violated copyright law.

2 51. In contrast to his testimony at the hearing of November 18, 2013, in
3 his written report of April 19, 2013, Mr. Garrison concluded only that
4 the first three sets of Professor Martinez's lecture notes subjected the
5 District "to a serious risk of a copyright infringement claim." See
6 District Exhibit 6, p. 0002.
7

8 52. The Administration paid Mr. Garrison approximately \$10,000.00 for
9 his opinions.
10

11 53. As soon as the Administration told Professor Martinez to stop using
12 the four sets of lecture notes in question, she complied with the order,
13 and she has not copied from other scholars' publications since the
14 Spring of 2010.
15

16 **Allegations of Improper Money Handling**

17 54. The Administration also accused Professor Martinez of violating the
18 District's "cash handling" rules by agreeing to copy some course
19 materials for her students if the students reimbursed her for her out-
20 of-pocket copying costs.
21

22 55. Specifically, Professor Martinez decided to use one of her colleague's
23 course materials for one of her classes and obtained the colleague's
24 permission to do so.
25

26 56. The Mathematics Department of Phoenix College had already
27 preapproved the use of these materials in lieu of a formal textbook.
28

57. The Chairperson of the Mathematics Department of Phoenix College

1 agreed to copy the materials individually for Professor Martinez, but
2 not as a group.

3 58. The Administration does not claim that any of these materials violated
4 the copyright laws.

5 59. Professor Martinez made a copy of the materials available for her
6 students to copy at their own expense.

7 60. Professor Martinez also agreed to make copies of the materials for
8 her students herself at a nearby "Staples" office supply store as a
9 simple courtesy to her students if they reimbursed her for her out-of-
10 pocket copying costs.

11 61. All of Professor Martinez's students elected to have Professor
12 Martinez make the copies and reimburse her for them.

13 62. Professor Martinez did not make any money in reference to making
14 the copies.

15 63. In fact, Professor Martinez actually lost about \$25.00 in making the
16 copies for her students.

17 64. The Administration subsequently claimed that Professor Martinez
18 violated the District's "cash handling" policies by seeking
19 reimbursement for the copies and ordered her to pay her students the
20 amount they had previously reimbursed her.

21 65. Because Professor Martinez did not think that she had violated any
22 District rule in reference to the copies, she declined to follow the
23 order because she was not required to do so under any District rule.
24
25
26
27
28

1 66. At the hearing, none of the Administration's witnesses was able to
2 specify what District rule Professor Martinez had violated in reference
3 to the copies.
4

5 **CONCLUSIONS AND RECOMMENDATIONS**

6 67. The federal copyright laws are complex and can be confusing to both
7 lawyers and non-lawyers alike.

8 68. This conclusion is underscored by the hearing testimony of the
9 respective parties' expert witnesses, Sean Garrison and Frederic
10 Bellamy.
11

12 69. Mr. Garrison and Mr. Bellamy are both highly educated, highly
13 experienced and highly credible intellectual property lawyers.
14

15 70. Both Mr. Garrison and Mr. Bellamy testified at the hearing in good
16 faith.

17 71. Notwithstanding their education, their experience, and their good
18 faith, Mr. Bellamy and Mr. Garrison disagreed as to whether or not
19 Professor Martinez violated federal copyright law.
20

21 72. The Committee also notes that the holders of the underlying
22 copyrights did not make any claim of copyright violation against either
23 the District or Professor Martinez.
24

25 73. This Committee need not and does not conclude whether or not
26 Professor Martinez violated federal copyright law.

27 74. The Committee is not a court of law and cannot make conclusions
28 regarding copyright law.

1 75. However, the Committee does conclude that Professor Martinez
2 copied the materials in question in good faith and sincerely believed
3 that she was not violating federal copyright law.

4
5 76. Professor Martinez's good faith belief that she was not violating
6 copyright law is supported by the express language of the Copyright
7 Act itself, which states that the "use of a copyrighted work . . . for
8 purposes such as criticism, comment, news reporting, teaching
9 (including multiple copies for classroom use), scholarship, or
10 research, is not an infringement of copyright." 17 U.S.C. § 107
11 (emphasis added).

12
13 77. Professor Martinez's good faith belief that she was not violating
14 copyright law is also supported by the hearing testimony of Frederic
15 Bellamy, who (as indicated above) credibly testified that Professor
16 Martinez did not violate the copyright laws under the "Fair Use"
17 doctrine.

18
19 78. Moreover, and in any event, Professor Martinez completely stopped
20 using the materials in question in the Spring of 2010 soon after the
21 Administration claimed that the materials violated federal copyright
22 law.

23
24 79. There is no evidence that Professor Martinez used materials
25 allegedly in violation of federal copyright law after the Spring of 2010.

26
27 80. The Administration also claims that Professor Martinez violated its
28 cash handling rules by "selling" a package of course materials to her

1 students.

2 81. The evidence shows that Professor Martinez did not "sell" any
3 materials to her students.

4
5 82. To the contrary, Professor Martinez made a set of the materials
6 available to her students to copy at their own expense.

7 83. As a courtesy to her students, Professor Martinez also offered to
8 copy the materials at Staples if the students agreed to reimburse her
9 for her out-of-pocket copying expenses.

10
11 84. All of Professor Martinez's students elected to have Professor
12 Martinez copy the materials and reimburse her for them.

13 85. Professor Martinez did not make a profit in connection with copying
14 the materials and in fact lost approximately \$25.00 of her own money
15 in reference to the copying.

16
17 86. The District has not alleged or proven that any of the materials that
18 Professor Martinez copied for her students at Staples violated the
19 copyright laws.

20
21 87. To the contrary, it was undisputed at the hearing that the materials in
22 question had already been approved by the Mathematics Department
23 of Phoenix College for classroom use in lieu of a textbook.

24 88. It was also undisputed that the chairperson of the Mathematics
25 Department at Phoenix College had agreed to copy the materials
26 section by section for Professor Martinez's classroom use.

27
28 89. It was also undisputed that the Administration had authorized

Professor Martinez to publish the materials on her website or at another location on the internet.

90. There is no District rule or regulation that prohibits a professor from copying materials for students and being reimbursed by the student for the copies.

91. It is undisputed that Professor Martinez only sought reimbursement for making copies for students on a single occasion in 2012.

92. Although Professor Martinez did not obey an order from the Administration to return the amount of money that she was reimbursed for the copies, no District rule required her to do so.

93. Professor Martinez testified at the hearing without contradiction that she would never engage in this behavior again.

94. Based upon the foregoing, the Committee concludes that Professor Martinez has not engaged in conduct that would justify her termination.

95. This conclusion is underscored by the fact that Professor Martinez has taught in the District for twenty-eight years without prior incident and the evidence was overwhelming that she has been a dedicated, excellent teacher during this entire time period.

96. Any alleged mistakes that Professor Martinez made in reference to the issue of either copyright or the District's cash handling rules were made in good faith and were isolated.

97. The Committee accordingly recommends that Professor Martinez not

1 be terminated and be returned to teaching in the classroom with all
2 deliberate speed.

3
4 Respectfully submitted this 27th day of November 2013.

5 **MONTOYA, JIMENEZ & PASTOR, P.A.**

6 s/ Stephen Montoya

7 Stephen Montoya
8 3200 North Central Avenue, Suite 2550
9 Phoenix, Arizona 85012
10 Attorney for Plaintiff

1 I hereby certify that on November 27, 2013, the foregoing document was sent via
2 email to:

3 Ernest Calderon
4 Ridenour Hienton & Lewis, PLLC
5 201 North Central Avenue, Suite 3300
6 Phoenix, Arizona 85004
7 ecalderon@rhlfirm.com
8 Counsel to the Hearing Committee

9 Taylor Bell
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Community College District

s/ Stephen Montoya

EXHIBIT 35

DECLARATION OF RUFUS GLASPER

Rufus Glasper, being first duly sworn upon his oath, deposes and says:

1. I am over the age of eighteen and am competent to testify as to all the matters set forth herein and would so testify if called upon to do so.

2. I have personal knowledge of the matters set forth herein. My personal knowledge is based upon my observations and personal participation in the events described below.

3. I am currently employed as the President and CEO of the League for Innovation in the Community College (the "League"). Prior to my employment with the League, I had worked for Maricopa County Community College District ("MCCCD") for approximately 30 years. My most recent position with MCCCD was Chancellor, a position I had held for more than ten years. In my role as Chancellor, I was the equivalent of the chief executive officer for MCCCD and oversaw its ten community colleges in the Phoenix metropolitan area, including Phoenix College.

4. On August 9, 2013, I received a letter from MCCCD Interim Vice Chancellor for Human Resources James Bowers recommending the dismissal of Phoenix College faculty member Dr. Cleopatria Martinez. A true and correct copy of the August 9, 2013 letter I received from Mr. Bowers is attached hereto as **Exhibit A**. Included with Mr. Bowers' email was a detailed Statement of Charges outlining the grounds for Dr. Martinez's dismissal.

5. After reviewing the August 9, 2013 Statement of Charges, I concurred with Mr. Bower's recommendation of dismissal. Accordingly, and in compliance with MCCCD's Residential Faculty Policy Manual ("RFP Manual"), I prepared an August 9, 2013 letter to Dr. Martinez notifying her that Phoenix College President Dr. Anna Solley and Mr. Bowers had recommended her dismissal and that I agreed with their recommendation. A true and correct copy of my August 9, 2013 letter to Dr. Martinez is

attached hereto as **Exhibit A**. My letter also informed Dr. Martinez that she had the right to request a dismissal hearing.

6. Dr. Martinez did, in fact, request a dismissal hearing which was held on November 18, 2013. Following the hearing, the Hearing Committee issued Findings of Fact and Conclusions of Law. A true and correct copy of the Hearing Committee's Findings of Fact and Conclusions of Law are attached hereto as **Exhibit B**. In their conclusions, the Hearing Committee found that Plaintiff engaged in "willful insubordination" and that she "willfully and intentionally failed to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley." Despite Dr. Martinez's willful insubordination, the Hearing Committee recommended against permanent separation of employment.

7. On or around January 23, 2014, I met with the Hearing Committee to inquire about the basis of its conclusions. The Hearing Committee members explained to me that because Plaintiff had been with the District for nearly 30 years, they were reluctant to recommend her permanent separation from employment, but believed a disciplinary action such as an unpaid suspension was appropriate.

8. In light of the Hearing Committee's recommendations, I prepared a revised February 10, 2014 Statement of Charges suspending Dr. Martinez from employment for 14 months. A true and correct copy of my February 10, 2014 Statement of Charges and related correspondence is attached hereto as **Exhibit C**. The suspension was based on the Hearing Committee's finding that Dr. had engaged in admitted "willful insubordination" in "willfully and intentionally fail[ing] to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley." The anticipated effective date of the suspension was March 1, 2014 through May 15, 2015.

9. To my knowledge, Dr. Martinez was notified of the suspension through her counsel, Stephen Montoya, and Dr. Martinez was offered an opportunity to meet with Mr. Bowers regarding her suspension. Although it was anticipated that Mr. Bowers would

meet with Dr. Martinez prior to March 1, 2014, Dr. Martinez asked that the meeting to be moved to March 7, 2014. MCCCDC accommodated Dr. Martinez's request and the meeting between Dr. Martinez and Mr. Bowers took place on or around March 7, 2014.

10. Following Mr. Bowers' meeting with Dr. Martinez, I issued a letter to Dr. Martinez notifying her that I had revised the dates of her suspension from March 1, 2014 through May 15, 2015 to a new suspension date of April 15, 2014 through May 15, 2015. A true and correct copy of my April 14, 2014 letter to Dr. Martinez is attached hereto as **Exhibit D**. In my letter I further advised Dr. Martinez that her teaching responsibilities and pay would resume for the fall semester of 2015.

11. To my knowledge, Dr. Martinez returned to her Mathematics faculty position at Phoenix College in the fall of 2015.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Executed this 3rd day of March, 2017 in Austin, Texas.

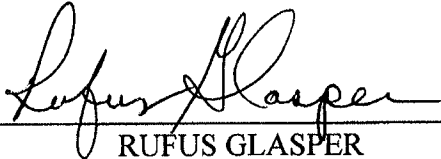

RUFUS GLASPER

Exhibit A

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MARICOPA
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Rufus Glasper
Chancellor

2411 W. 14th Street, Tempe, Arizona 85281-6942 • T 480.731.8100 • F 480.731.8120 • r.glasper@domail.maricopa.edu

August 9, 2013

Cleopatra Martinez
7030 N. 21st Street
Phoenix, AZ 85020

Re: Intent to dismiss you from your employment

Dear Dr. Martinez:

Dr. Anna Solley, President of Phoenix College (PC) has forwarded a statement of charges to James Bowers, Interim Vice Chancellor for Human Resources. Mr. Bowers has reviewed the charges, in consultation with the MCCCDC Legal Office, and recommended to me that there exists prima facie cause for your dismissal from your position as Mathematics Faculty at Phoenix College (see attached). I concur with his recommendation. The recommended effective date of your involuntary termination is September 24, 2013.

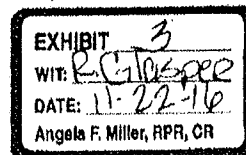
Maricopa County Community College District Administrative Regulation 8.7 states that violation of any of its Employment Standards "constitutes grounds for disciplinary action, up to and including termination of any Maricopa County Community College District (MCCCDC) employee as outlined by the respective policy manuals".

Pursuant to Section 3.15.3 of the RFP Policy Manual, you may invoke your right to a hearing by filing a written request with Interim Vice Chancellor James Bowers within five (5) business days after being served with this notice of intent to dismiss you from your employment.

Sincerely,

Rufus Glasper, Ph.D., CPA
Chancellor

Cc: MCCCDC Governing Board
Dr. Anna Solley
Mr. Jim Bowers



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August 9, 2013

Cleopatria Martinez
7030 N. 21st Street
Phoenix, AZ 85020

RE: Employment Status

Dear Dr. Martinez:

You are being placed on paid administrative leave from August 12 through September 24, 2013, pending the approval of your termination. During administrative leave, you will remain an employee of Maricopa County Community College District (MCCCD) and must continue to observe all policies regarding employee conduct.

For the duration of paid administrative leave, you should not report to work nor do you need to make contact with your supervisor. Upon approval of your termination by the Maricopa County Community Colleges Governing Board, you will be notified regarding the termination of your employment status with MCCCD.

Sincerely,

James Bowers, J.D.
Interim Vice Chancellor for Human Resources

cc: Dr. Anna Solley
Employee Personnel File

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Vice Chancellor
Human Resources

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August 9, 2013

Dear Dr. Glasper:

The following statement of charges against Dr. Cleopatria Martinez was forwarded to me by Dr. Anna Solley, President, Phoenix College. Pursuant to 3.15.1 of the Residential Faculty Policy (RFP), I have reviewed the charges, in consultation with the MCCCDC Legal Office, and recommend to you that there exists prima facie cause for the dismissal of Dr. Cleopatria Martinez.

Sincerely,

James Bowers, J.D.
Interim Vice Chancellor for Human Resources

Statement of Charges

- Violation of Administrative Regulation 6.7.1 - "Willful and intentional violation of any state or federal law, applicable ordinance, MCCCDC Governing Board policy, or MCCCDC administrative regulation that affects the employee's ability to perform his or her job", specifically:
 - Violation of MCCCDC's cash handling rules as covered by MCCCDC Administrative Regulations 1.17
- Violation of Residential Faculty Policy Manual 3.2.4 - "A Faculty member shall not have any financial interest in or receive compensation from the sale of any unpublished instructional materials required or suggested for a class that the Faculty member teaches."
- Violation of U.S. Copyright Law and fair use guidelines, and MCCCDC Administrative Regulations 3.2.4 and 3.2.5 regarding copyright regulations:

3.2.4 Employees are prohibited from copying materials not specifically allowed by the (1) copyright Law, (2) fair use guidelines, (3) Licenses or contractual agreements, or (4) other permission.

3.2.6 The Governing Board disapproves of unauthorized duplication in any form. Employees who willfully disregard this Board policy and/or the aforementioned copyright guidelines do so at their own risk and assume all liability for their actions.

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- Violation of Administrative Regulation 6.7.3 - "Willful and intentional failure to perform job duties that have first been communicated to an employee and are within the employee's scope of employment", specifically, repeated failure to follow instructions regarding printing/copying of unauthorized materials, failure to use only approved course materials, unauthorized copying and sale of course materials, failure to reimburse students for the materials you wrongfully charged them for, and failure to meet the deadline to provide copies of any reimbursement checks to students.

Brief Timeline:

- January 2010 - College Vice Presidents Ronnie Elliott, Paul DeRose and Cassandra Kakar; along with Maggie McConnell; Assistant General Counsel, reviewed the requirements of AR 3.2 with you at length.
- April 2, 2010 - Anna Solley, Phoenix College President, notified you that your copying privileges at the Phoenix College IKON Copy Center were suspended.
- Spring 2010 - An Administrative Evaluation was initiated based on Mr. Joe Sueyoshi's complaint. By agreement, the Evaluation Team did not undertake its task until the fall semester. The findings and recommendations were submitted to Dr. Solley on November 17, 2010. The overall findings included:
 - Copyright and plagiarism: Dr. Martinez was notified in writing and in meetings of MCCC's and Phoenix College's concerns regarding her course materials violating copyright, fair use, and plagiarism laws.
 - Insubordination: Dr. Martinez failed to follow Dr. Solley's and MCCC's Legal Counsel's directives - specifically, she repeatedly requested copies, copied and printed unauthorized materials.
- December 9, 2010 - Dr. Solley administered an initial Corrective Action to you for insubordination and failure to follow instructions regarding printing or copying of unauthorized materials.
- August 21-23, 2012 - You told your MAT 091 and MAT 151 students not to buy the approved text that you listed on the syllabus. Instead, you made copies of a colleague's materials and sold them to your students for \$11 each.
- October 18, 2012 - A Second Corrective Action for insubordination and unauthorized copying and sale of course materials was administered to you by Dr. Solley. Included in the corrective action was the following directive: "Because you imposed charges on your students without authority to do so, you have the responsibility to reimburse the students from your own funds. You are hereby directed to do so by personal check, beginning immediately and continuing until all students who paid you are reimbursed."
- January 11, 2013 - Upon discovering that the students who bought your unauthorized course materials had yet to be reimbursed, Cassandra Kakar directed you, via email, to provide her, by January 18, 2013, with front and back copies of all cashed personal reimbursement checks to your students.
- January 18, 2013 - You failed to provide Dr. Kakar with copies of any reimbursement checks and neglected to contact her regarding the money you still owe the students.
- February 21, 2013 - A student turned in the MAT091 materials which you left in room B210. Timothy Bryan, Mathematics Faculty, has previously told you that you do not have permission to use his materials again.

Exhibit B

12-9-2013

BEFORE THE GOVERNING BOARD OF THE
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

MARICOPA COUNTY COMMUNITY
COLLEGE DISTRICT,

v.

DR. CLEOPATRIA MARTINEZ.

) HEARING COMMITTEE

) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, AND RECOMMENDATION

Pursuant to the October 16, 2013 Scheduling Order, having reviewed all of the parties' pleadings and exhibits and conducting a hearing on November 18, 2013, the Hearing Committee (by majority vote) hereby submits the following Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT

1. After having taught mathematics full-time for ten years at Denver Community College, Dr. Cleopatria Martinez moved to Arizona and started teaching mathematics full-time at Scottsdale Community College on January 1, 1985.

2. Dr. Martinez voluntarily transferred to Phoenix College ("PC") in 1995 and has been teaching mathematics there full-time ever since.

3. Dr. Martinez elected to voluntarily transfer to PC because there were very few minority students attending Scottsdale Community College, and she wanted to use her bilingual education skills in the mathematics classroom to better educate the large number of minority students attending PC.

4. Dr. Martinez was elected by her colleagues to serve as the Chairperson of the Mathematics Department of PC from 2002 to 2005.

5. In early 2010, PC discovered that Dr. Cleopatria Martinez may have exposed MCCCDC to potential liability for copyright infringement.

6. Dr. Martinez testified that, during her twenty-eight years of teaching mathematics in the MCCCDC system, she and her colleagues in the Mathematics Departments of both Scottsdale Community College and PC routinely borrowed mathematics problems from other mathematicians to use in their student handouts for educational purposes on a not for profit basis.

7. Dr. Martinez testified, without rebuttal, that this borrowing of mathematics problems is a longstanding, widespread custom throughout the District and academia at large.

8. Instead of requiring her mathematics students to purchase textbooks, Dr. Martinez prepared her own course materials which she called her "Lecture Notes" and distributed them to

her students. MCCCC Exhibit List # 4-5 (Martinez Depo., pp. 77:17-78:15, 106:16-108:16, 121:25-140:13, 132:16-137:25).

9. Dr. Martinez read the Copyright Act of 1976 and believed that it authorized her to use small portions of other scholars' work under the "Fair Use" doctrine because she was using it only for classroom teaching purposes on a not for profit basis and her use of the material did not undermine the potential market for the other scholar's work.

10. Per the "Fair Use" doctrine of the Copyright Act, the "use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." 17 U.S.C. § 107.

11. Dr. Martinez copied problems from copyright protected textbooks and inserted them into her course materials. MCCCC Exhibit List # 4-5 (Martinez Depo., pp. 106:16-108:16).

12. Dr. Martinez, in her Basic Arithmetic (MAT082) course, copied problems directly from a copyrighted textbook entitled "Basic Mathematics" and inserted them into her "MAT 082 Basic Arithmetic Spring 2010" course materials which she distributed to students. MCCCC Exhibit List # 20 (Full-Sized Excerpted Comparison). She did not seek or obtain permission from the copyright holder.

13. Dr. Martinez also copied problems directly from the Sullivan & Sullivan "Precalculus" textbook and inserted them into her "MAT182 Trigonometry Spring 2010" course materials. MCCCC Exhibit List # 22 (Full-Sized Excerpted Comparison). She did not seek or obtain permission from the copyright holder.

14. Dr. Martinez did not require her students to purchase textbooks in her Spring MAT082 Course. MCCCC Exhibit List # 18 (email from Dr. Martinez stating "I indicated in my syllabus that, instead of a published textbook, I was using lecture notes in my MAT082 class.")

15. Dr. Martinez did not require her students to purchase textbooks in her Spring MAT182 Course. See Dr. Martinez's hearing testimony (conceding that students were not required to purchase a textbook in her Spring 2010 MAT182 course).

16. On or around January 12, 2010, MCCCC's Vice President of Academic Services, Ronnie Elliot, sent Dr. Martinez an email notifying her that there were alleged copyright related problems with the materials she had printed for the Fall 2009 and Spring 2010 semesters. MCCCC Exhibit List # 23 (January 12, 2010 email). The materials in question were packets of course materials for Dr. Martinez's MAT182 and MAT187 courses and contained mathematics problems and graphs that were taken from copyrighted textbooks. MCCCC Exhibit List # 11 (Ronnie Elliot Declaration, ¶¶8-9); MCCCC Exhibit List # 16 (MAT182 course packet); MCCCC Exhibit List # 7 (Sean Garrison October 28, 2010 Memorandum).

17. Dr. Martinez used three of the four packets of "lecture notes" in the Spring of 2010 in two pre-calculus classes. See District Exhibit 6, parts 1-3.

18. The MCCCCD administration, following Vice President Elliot's email, repeatedly explained its copyright concerns to Dr. Martinez and asked Dr. Martinez to remove any copyright protected mathematics problems from her materials. See Kakar Hearing Testimony.

19. On January 26, 2010, Vice President Elliot sent Dr. Martinez an email outlining MCCCCD's concerns regarding Dr. Martinez's potential copyright infringement. MCCCCD Exhibit List # 24 (January 26, 2010 email).

20. On January 28, 2010, MCCCCD in-house-counsel Margaret McConnell discussed copyright compliance with Dr. Martinez telephonically. MCCCCD Exhibit List # 25 (January 28, 2010 email).

21. Dr. Martinez did not benefit from the multiple MCCCCD copyright information sessions noted above.

22. PC's own expert witness, Sean Garrison, testified that under the "Fair Use" doctrine, someone could lawfully copy from a copyrighted textbook without either using or purchasing the textbook.

23. On February 5, 2010, Vice President of Academic Affairs Casandra Kakar, Interim Vice President of Administrative Services Paul DeRose, and Dr. Martinez met to discuss Dr. Martinez's alleged misuse of copyrighted materials. MCCCCD Exhibit List # 26 (February 12, 2010 email).

24. Dr. Martinez has not used any of the four sets of "lecture notes" since the Spring of 2010 when PC first raised its concerns regarding the notes.

25. On April 15, 2010, PC Librarian Ann Roselle conducted a personalized one-on-one copyright training session with Dr. Martinez. MCCCCD Exhibit List # 28 (Copyright PowerPoint Presentation). See also, Kakar Hearing Testimony.

26. When Dr. Martinez met with the librarian, the librarian told Dr. Martinez that Dr. Martinez knew as much about copyright law as she did. See Martinez Hearing Testimony.

27. Following the revocation of Dr. Martinez's copying privileges, Dr. Martinez was required to submit her copy requests to Mathematics Department Chairperson Mr. Sueyoshi so that Mr. Sueyoshi could review her materials for possible copyright violations prior to copying and distribution to students. MCCCCD Exhibit List # 8 (April 2, 2010 Directive).

28. Dr. Martinez sought and obtained a form of written permission from the publisher of the textbook, Sullivan & Sullivan's "Precalculus," to copy materials from their book after PC accused her of violating copyright law.

29. On or around April 19, 2010, Dr. Martinez attempted to bypass the copying restrictions by having an adjunct mathematics Professor, Johnny Santellan, make 24 sets of copies of her "Lecture Notes" for distribution to her mathematics students without obtaining prior approval from the Mathematics Department Chairperson. MCCCCD Exhibit List # 12 (Sueyoshi Deol., ¶9); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 223:11-224:21).

30. Because Dr. Martinez did not feel she was able to obtain reliable guidance regarding copyright compliance from the District, she sought advice from a private intellectual property attorney regarding the issue, Mr. Frederic Bellamy.

31. Mr. Bellamy reviewed the first two sets of Dr. Martinez's "lecture notes" and concluded that they did not violate copyright law because they fell under the "Fair Use" doctrine.

32. Mr. Bellamy based his conclusion that Dr. Martinez did not violate copyright law on the opinion that the portion of material that Dr. Martinez copied from the Sullivan & Sullivan Precalculus textbook was very small, that she used the copied materials exclusively for educational purposes without any profit motive, that the content of the copied material consisted of mathematics problems that are arguably not subject to copyright in the first place, and that the small portion of the textbook that Dr. Martinez copied did not adversely impact the potential market for the textbook.

33. At the hearing, another lawyer practicing in the area of intellectual property law, Sean Garrison, testified on behalf of PC. In contrast to Mr. Bellamy, Mr. Garrison testified at the hearing that the first three sets of Dr. Martinez's lecture notes violated copyright law.

34. In contrast to his testimony at the hearing of November 18, 2013, in his written report Mr. Garrison concluded only that the first three sets of Dr. Martinez's lecture notes subjected the District "to a serious risk of a copyright infringement claim." See District Exhibit 6, p. 0002.

35. MCCCCD invited Dr. Martinez to a copyright workshop that was held on March 1, 2010 at PC. Dr. Martinez chose not to attend the workshop. MCCCCD Exhibit List # 10 (Solley Decl., ¶11).

36. PC President Anna Solley, on December 9, 2010, concluded that Dr. Martinez's alleged misconduct posed an unacceptable legal risk of a copyright infringement claim and imposed restrictions on Dr. Martinez's photocopying privileges. MCCCCD Exhibit List # 10 (Solley Decl., ¶12).

37. MCCCCD sought a legal opinion from an outside copyright expert, attorney Sean Garrison. MCCCCD Exhibit List # 10 (Solley Decl., ¶ 14); MCCCCD Exhibit List # 7 (Sean Garrison October 28, 2010 Memo).

38. According to Mr. Garrison, the third set of "lecture notes" appeared to have 13 mathematics problems copied from two other mathematics textbooks.

39. Mr. Garrison testified that he was certain that Dr. Martinez has committed copyright infringement. See Garrison Hearing Testimony. In reaching this conclusion, Mr. Garrison reviewed thousands of pages of materials including nearly 300 pages of Dr. Martinez's lecture notes and three separate copyrighted mathematics textbooks. MCCCCD Exhibit List # 6 (Sean Garrison April 19, 2013 Report); see also Garrison Hearing Testimony.

40. In reliance upon Mr. Garrison's recommendations, PC President Anna Solley issued a December 9, 2010 directive that imposed further restrictions on Dr. Martinez's copying

privileges. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 10 (Solley Decl., ¶15).

41. The December 9, 2010 Directive prohibited Dr. Martinez from utilizing any course materials of her own creation. MCCCCD Exhibit List # 9 (December 9, 2010 Directive). Instead, Dr. Martinez was required to only use course materials that are "approved by the mathematics department" or that are "available in the bookstore for sale to students and that are authored by persons other than [Dr. Martinez]." MCCCCD Exhibit List # 9 (December 9, 2010 Directive).

42. The December 9, 2010 Directive further required Dr. Martinez to submit her photocopy requests to the Mathematics Department Chair for his approval. MCCCCD Exhibit List # 9 (December 9, 2010 Directive).

43. Despite MCCCCD's frequent discussions with Dr. Martinez regarding the importance of complying with copyright laws and the December 9, 2010 Directive, Dr. Martinez continued to attempt to ignore the directive. See Kakar Hearing Testimony.

44. At the beginning of the Fall 2012 semester (on or about August 21-23, 2012), Dr. Martinez informed her students that they were not required to purchase a course textbook and that she would provide them with her own course materials in lieu of a textbook. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

45. In fall of 2012, Dr. Martinez sought to have her lecture notes photocopied off campus at a nearby Staples store. This practice is inconsistent with the December 9, 2010 Directive. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

46. Dr. Martinez did not submit her Fall 2012 materials to Mathematics Department Chairperson Mr. Sueyoshi for approval. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

47. Dr. Martinez made copies of her course materials at an off-campus Staples store and distributed them to students for \$11 per copy. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

48. The \$11 course material fee was paid directly to Dr. Martinez by students. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

49. PC accused Dr. Martinez of violating the District's "cash handling" rules by distributing these course materials to her students if the students reimbursed her for her out-of-pocket copying costs.

50. PC subsequently claimed that Dr. Martinez violated the District's "cash handling" policies by seeking reimbursement for the copies.

51. MCCCCD's policies prohibit instructors from having "any financial interest in or receiv[ing] compensation from the sale of any unpublished instructional materials required or

suggested for a class that the instructor teaches." MCCCC Exhibit List # 41 (Residential Faculty Policies, 3.2.4).).

52. Dr. Martinez failed to follow the protocol set forth in the December 9, 2010 Directive in copying her Fall 2012 course materials. MCCCC Exhibit List # 9 (December 9, 2010 Directive); MCCCC Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

53. Dr. Martinez distributed course materials directly to students in her Fall 2012 MAT151 class. MCCCC Exhibit List # 4-5 (Martinez Depo. pp. 232:19-233:21).

54. The MCCCC Administration learned of Dr. Martinez's unauthorized distribution of course materials to students after one of Dr. Martinez's MAT151 students complained to Mathematics Department Chairperson Mr. Sueyoshi. The student complained that Dr. Martinez refused to provide her with a receipt for the purchased course materials. See Kakar Hearing Testimony.

55. Upon learning that Dr. Martinez had distributed course materials to students allegedly in violation of MCCCC's cash handling policy, President Solley instructed Martinez to immediately issue refunds to her students via personal check. MCCCC Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony.

56. On or around October 18, 2012, President Solley and Dr. Kakar met with Dr. Martinez to explain the seriousness of Dr. Martinez's alleged cash handling violation. MCCCC Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony. In addition, President Solley and Dr. Kakar prepared a written counseling memo dated October 18, 2010 for Dr. Martinez regarding her alleged violation of cash handling rules. Dr. Martinez was provided with a copy of the October 18, 2010 counseling notice and President Solley proceeded to explain to Dr. Martinez the seriousness of the alleged cash handling violations and the requirement that Dr. Martinez issue reimbursements to her students. MCCCC Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony.

57. Several months later, on or around January 9, 2013, Dr. Kakar learned that most (if not all) students had not yet received refunds from the Dr. Martinez. MCCCC Exhibit List # 39 (various emails regarding student refunds). As a result, Dr. Kakar instructed Dr. Martinez to provide copies of refund checks by January 18, 2013. MCCCC Exhibit List # 39 (various emails regarding student refunds).

58. Dr. Martinez failed to produce a single refund check by the January 18, 2013 deadline. MCCCC Exhibit List # 39 (various emails regarding student refunds).

59. Dr. Martinez did not think that she had violated any District rule in reference to the copies. Therefore, she declined to follow the December 9, 2010 order because she believed she was not required to do so under any District rule.

60. At the November 18, 2013 hearing, Dr. Martinez did not provide any explanation for her refusal to comply with the October 18, 2012 and January 9, 2013 directives to issue refunds to her students. See Martinez Hearing Testimony.

61. At the hearing Dr. Martinez testified that she had made a "mistake" and, in retrospect, should have complied with President Solley's instructions. See Martinez Hearing Testimony.

62. On or around August 9, 2013, MCCCDC Chancellor Rufus Glasper sent Dr. Martinez a letter informing her that MCCCDC was proceeding with termination proceedings. Included with this letter was a statement of charges that summarized the particular violations Dr. Martinez had been charged with (hereinafter referred to as "Statement of Charges.") MCCCDC Exhibit List # 1 (Statement of Charges).

CONCLUSIONS

63. PC failed to carry its burden of proof relating to violation of MCCCDC's cash handling rules found in MCCCDC Administrative Regulations 1.17, violation of Residential Policy Manual 3.2.4 (relating to financial interests in unpublished materials), violation of U.S. Copyright Law and fair use guidelines, and violation of MCCCDC Administrative Regulations 3.2.4 and 3.2.5 related to copyright regulations.

64. Notwithstanding their education, their experience, and their good faith, Mr. Bellamy and Mr. Garrison disagreed as to whether or not Dr. Martinez violated copyright law. Therefore, it is inconclusive as to whether Dr. Martinez intentionally and/or inadvertently violated federal copyright law.

65. It is inconclusive as to whether or not Dr. Martinez violated the "cash handling" policies of MCCCDC.

66. Dr. Martinez willfully and intentionally failed to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley.

45-50
Students

67. Dr. Martinez conceded that she never complied with President Solley's clear directive to issue refunds to her students. Although Dr. Martinez now regrets her decision not to comply with President Solley's directive, she has never claimed that she did not understand the instructions or that the instructions were beyond the scope of management's authority. Viewed in light of these facts, Martinez's claim that she "made a mistake" is an admission of willful insubordination.

68. By failing to comply with President Solley's directive to issue refunds to her students, Dr. Martinez violated MCCCDC Administrative Regulation 6.7.1 which prohibits the "[w]illful and intentional violation of any...MCCCDC administrative regulation that affects the employee's ability to perform his or her job." }

69. By failing to comply with President Solley's directive to issue refunds to students, Dr. Martinez violated MCCCDC Administrative Regulation 6.7.3 which prohibits the "[w]illful and intentional failure to perform job duties that have first been communicated to an employee and are within the employee's scope of employment."

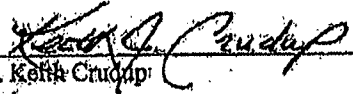
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RECOMMENDATION

70. We hereby recommend that the Governing Board deny President Solley's termination request and allow Dr. Martinez to continue her MCCCED employment.

71. Per MCCCED Administrative Regulation 6.7 indicating that violation of any Employment Standards "constitutes grounds for disciplinary action, *up to* [emphasis added], and including termination," we hereby recommend that the Governing Board retain Dr. Martinez.

It is ordered so, at Mesa, Arizona, this 9th day of December, 2013.



Dr. Keith Crump
Chairperson
On Behalf of the Hearing Committee,
Dr. Nora Reyes and Dr. Carlos Cairo

Exhibit C



**MARICOPA COMMUNITY COLLEGES
OFFICE OF THE CHANCELLOR**

MEMORANDUM

DATE: February 10, 2014
TO: Dana Saar, President
MCCCD Governing Board
FROM: Rufus Glasper

A handwritten signature of Rufus Glasper in black ink.

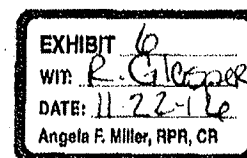
SUBJECT: Recommendation to adopt hearing committee's recommendation
regarding dismissal, Dr. Cleopatria Martinez

On August 9, 2013, I notified Dr. Cleopatria Martinez, in writing that I intended to recommend to the MCCCD Governing Board that she be dismissed from her position as Mathematics Faculty at Phoenix College (copy attached). This recommendation was based on a statement of charges against Dr. Martinez prepared by Dr. Anna Solley, President of Phoenix College, and reviewed and forwarded to me by James N. Bowers, Interim Vice Chancellor for Human Resources (copy attached).

Pursuant to Section 3.15.3 of the RFP Policy Manual, Dr. Martinez invoked her right to a hearing on her dismissal. This hearing was held on November 18, 2013 pursuant to section 3.15.2 – 3.15.7 of the RFP Policy Manual.

I received the Hearing Committee's Summary of Evidence, Findings of Fact, Conclusions of Law and Recommendation on December 9, 2013. I was unable to schedule a meeting with the hearing committee because of the winter break, and the parties graciously extended the time for my decision to permit me this opportunity. On January 23, 2014, pursuant to section 3.15.8 of the RFP Policy Manual, I met with the Hearing Committee to clarify questions I had concerning their recommendations.

Now, as required by section 3.15.8 of the RFP Policy Manual, I am providing the Governing Board with my recommendation regarding dismissal along with the Summary of the Evidence and a copy of the Findings of Fact, Conclusions of Law and final recommendations of the Hearing Committee.



Page 2

Based on all of the information referred to above and attached hereto, I accept the written recommendation of the committee that Dr. Martinez NOT be dismissed. After consulting with the committee I have determined that a lesser sanction authorized by the RFP and within my sole discretion as Chancellor is appropriate and warranted.

Attachments

cc: MCCCCD Governing Board Members
Mr. Jim Bowers
Dr. Anna Solley
Mr. Pavneet Uppal
Mr. Steve Montoya



MARICOPA
COMMUNITY
COLLEGES

Rufus Glasper
Chancellor

2411 W. 14th Street, Tempe, Arizona 85281-6942 • T 480.731.8100 • F 480.731.8120 • r.glasper@domail.maricopa.edu

February 10, 2014

Dr. Cleopatria Martinez
7030 N. 21st Street
Phoenix, AZ 85020

Re: Notice of Suspension without Pay

Dear Dr. Martinez:

Based upon the attached written statement of charges, I have decided to suspend your employment under my sole authority as Chancellor pursuant to section 3.11 of the Residential Faculty Policies. The purpose of this letter is to notify you that your suspension from your position as Mathematics faculty at Phoenix College will begin on March 1, 2014 and end on May 15, 2015. Your teaching responsibilities and pay will resume Fall semester, 2015 unless you choose to retire (see below).

Having sought the advice of the General Counsel as required by section 3.11.3 of the RFP, I am satisfied that your procedural rights concerning the grounds for suspension have been met. The basis for this action is the unanimous finding of an independent hearing committee that you willfully violated the district policies set forth in the statement of charges and that I have the authority to suspend your employment without pay.

Also under the terms of subsection 3.11.3, the interim Vice Chancellor for Human Resources will offer to consult with you (and the Faculty Association President, if you choose) concerning the rationale for this decision. If you accept his invitation, he will deliver this notice and attachment after the meeting. If you decline your opportunity to consult with him, he will have the decision delivered to you in accordance with the policy.

You may voluntarily retire from your position in lieu of this suspension without pay. If you elect to do so, you will remain on paid administrative leave and be paid through May 9, 2014.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Rufus Glasper'.

Rufus Glasper, Ph.D., CPA
Chancellor

A handwritten signature in cursive script, appearing to read 'Lee Combs'.

Lee Combs
General Legal Counsel

cc: Dr. Anna Solley
Mr. Jim Bowers

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Rufus Glasper
Chancellor

2411 W. 14th Street, Tempe, Arizona 85281-6942 • T 480.731.8100 • F 480.731.8120 • r.glasper@domail.maricopa.edu

February 10, 2014

Dr. Cleopatria Martinez
7030 N. 21st Street
Phoenix, AZ 85020

Re: Statement of Charges

Based upon the findings of the hearing committee which are attached to this statement, and the record of their proceedings, I have determined as follows:

In teaching your Phoenix College mathematics students, you did not use a textbook. Instead, you prepared your own course materials you called your "lecture notes," copied them on Phoenix College equipment and at College expense, and distributed them to your students without charge. In preparing your notes, you copied problems from copyright protected textbooks and inserted them into your lecture notes without attribution to, or permission of, the copyright holders.

In early 2010, Phoenix College discovered that you may have exposed MCCCDC to liability for copyright infringement, notified you of the concerns, and provided training and legal counsel. To protect the College from the risk of liability, in April 2010 President Solley restricted your copying privileges, allowing only those copy projects approved by your department chair. You attempted to bypass these restrictions. The chair filed a complaint that was referred to an administrative evaluation team for investigation. The team, including your own appointee, unanimously concluded that your lecture notes violated copyright and that you had failed to follow President Solley's direction.

President Solley considered this history, and on December 10, 2010 imposed a stricter restriction in accordance with the RFP. She directed you to use only course materials approved by the department, that were available in the bookstore for sale to the students, and that were authored by persons other than yourself. She also required that you provide proper attribution of authorship of the materials by others and show evidence that you had purchased the materials or otherwise received permission to use them from the author. She restricted your authority to copy to materials approved by your department chair after two days' notice and written proof that you had permission of the author to copy the materials.

In concluding her directive, Dr. Solley stated, "This direction is intended to communicate job duties to you within the meaning of Governing Board employment standard A4.3. In accordance with that section of the All Employment Policy Manual, willful and intentional violation of these instructions will be considered grounds for disciplinary action, up to and including dismissal."

Despite MCCCDC's frequent discussions with you regarding the importance of complying with copyright laws and the December 9, 2010 directive, you continued to attempt to ignore the directive. At the beginning of the Fall 2012 Semester, you informed your students that they were not required to purchase a course textbook and that you would provide them with your own course materials in lieu of a textbook. In violation of President Solley's December, 2010 directive, you made copies at a local Staples store of course materials that had not been approved by your department chair, and distributed them to your students for \$11 per copy, payable directly to you. This distribution violated Dr. Solley's directive.

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Page 2

You decided unilaterally that no district policy required you to comply with the job duties communicated to you in writing by Dr. Solley, so you violated them. However, her directive was issued under section 3.7.4 of the RFP. This section authorizes a president to take "any appropriate action" after receiving the results of the administrative review. In considering the appropriate action, Dr. Solley relied on the advice of expert counsel to assess the risk of liability represented by your behavior, on your documented history of evasion of her prior efforts to protect MCCCCD, and the unanimous report of the administrative evaluation team. You did not file a timely appeal or grievance seeking review of this directive.

An additional concern arose after a student brought the copying to PC's attention, complaining that you did not provide receipts for the material charges. MCCCCD Administrative Regulation 1.12. states as follows:

"1.12.2 Authorization

Prior to participating in the sale of products or services, Revenue and Expenditure categories must be included in a program's budget, and approved by the Governing Board during the annual budget adoption process, or as legally changed during a fiscal year.

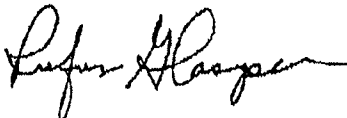
1.12.3 Fees

Fees exchanged for products or services produced through an educational, training, or service activity shall be pre-approved by the Governing Board."

Phoenix College determined that your course materials charge was not included in the adopted budget or pre-approved by the Governing Board. Dr. Solley therefore issued a corrective action that directed you to issue refunds to the students for the unauthorized charge. You refused, and offered no explanation or justification of your decision to the hearing committee. The hearing committee found your failure to comply with the corrective action was in violation of Administrative Regulation 6.7.1 and Administrative Regulation 6.7.3.

Therefore, for purposes of RFP Section 3.13, this letter will serve as a statement of charges that you are in violation of Administrative Regulation 6.7.1 and Administrative Regulation 6.7.3. In accordance with these regulations, disciplinary action up to and including termination is warranted. I accept the hearing committee's recommendation that you should not be dismissed from employment. However, I believe suspension without pay for a substantial time is the appropriate sanction.

Sincerely,

A handwritten signature in black ink, appearing to read "Rufus Glasper", with a stylized, cursive script.

Rufus Glasper, Ph.D. CPA
Chancellor

BEFORE THE GOVERNING BOARD OF THE
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

MARICOPA COUNTY COMMUNITY)	
COLLEGE DISTRICT,)	HEARING COMMITTEE
)	
v.)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND RECOMMENDATION
<u>DR. CLEOPATRIA MARTINEZ</u>)	

Pursuant to the October 16, 2013 Scheduling Order, having reviewed all of the parties' pleadings and exhibits and conducting a hearing on November 18, 2013, the Hearing Committee (by majority vote) hereby submits the following Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT

1. After having taught mathematics full-time for ten years at Denver Community College, Dr. Cleopatria Martinez moved to Arizona and started teaching mathematics full-time at Scottsdale Community College on January 1, 1985.

2. Dr. Martinez voluntarily transferred to Phoenix College ("PC") in 1995 and has been teaching mathematics there full-time ever since.

3. Dr. Martinez elected to voluntarily transfer to PC because there were very few minority students attending Scottsdale Community College, and she wanted to use her bilingual education skills in the mathematics classroom to better educate the large number of minority students attending PC.

4. Dr. Martinez was elected by her colleagues to serve as the Chairperson of the Mathematics Department of PC from 2002 to 2005.

5. In early 2010, PC discovered that Dr. Cleopatria Martinez may have exposed MCCCCD to potential liability for copyright infringement.

6. Dr. Martinez testified that, during her twenty-eight years of teaching mathematics in the MCCCCD system, she and her colleagues in the Mathematics Departments of both Scottsdale Community College and PC routinely borrowed mathematics problems from other mathematicians to use in their student handouts for educational purposes on a not for profit basis.

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8. Instead of requiring her mathematics students to purchase textbooks, Dr. Martinez prepared her own course materials which she called her "Lecture Notes" and distributed them to

her students. MCCCC Exhibit List # 4-5 (Martinez Depo., pp. 77:17-78:15, 106:16-108:16, 121:25-140:13, 132:16-137:25).

9. Dr. Martinez read the Copyright Act of 1976 and believed that it authorized her to use small portions of other scholars' work under the "Fair Use" doctrine because she was using it only for classroom teaching purposes on a not for profit basis and her use of the material did not undermine the potential market for the other scholar's work.

10. Per the "Fair Use" doctrine of the Copyright Act, the "use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." 17 U.S.C. § 107.

11. Dr. Martinez copied problems from copyright protected textbooks and inserted them into her course materials. MCCCC Exhibit List # 4-5 (Martinez Depo., pp. 106:16-108:16).

12. Dr. Martinez, in her Basic Arithmetic (MAT082) course, copied problems directly from a copyrighted textbook entitled "Basic Mathematics" and inserted them into her "MAT 082 Basic Arithmetic Spring 2010" course materials which she distributed to students. MCCCC Exhibit List # 20 (Full-Sized Excerpted Comparison). She did not seek or obtain permission from the copyright holder.

13. Dr. Martinez also copied problems directly from the Sullivan & Sullivan "Precalculus" textbook and inserted them into her "MAT182 Trigonometry Spring 2010" course materials. MCCCC Exhibit List # 22 (Full-Sized Excerpted Comparison). She did not seek or obtain permission from the copyright holder.

14. Dr. Martinez did not require her students to purchase textbooks in her Spring MAT082 Course. MCCCC Exhibit List # 18 (email from Dr. Martinez stating "I indicated in my syllabus that, instead of a published textbook, I was using lecture notes in my MAT082 class.")

15. Dr. Martinez did not require her students to purchase textbooks in her Spring MAT182 Course. See Dr. Martinez's hearing testimony (conceding that students were not required to purchase a textbook in her Spring 2010 MAT182 course).

16. On or around January 12, 2010, MCCCC's Vice President of Academic Services, Ronnie Elliot, sent Dr. Martinez an email notifying her that there were alleged copyright related problems with the materials she had printed for the Fall 2009 and Spring 2010 semesters. MCCCC Exhibit List # 23 (January 12, 2010 email). The materials in question were packets of course materials for Dr. Martinez's MAT182 and MAT187 courses and contained mathematics problems and graphs that were taken from copyrighted textbooks. MCCCC Exhibit List # 11 (Ronnie Elliot Declaration, ¶¶8-9); MCCCC Exhibit List # 16 (MAT182 course packet); MCCCC Exhibit List # 7 (Sean Garrison October 28, 2010 Memorandum).

17. Dr. Martinez used three of the four packets of "lecture notes" in the Spring of 2010 in two pre-calculus classes. See District Exhibit 6, parts 1-3.

18. The MCCCCD administration, following Vice President Elliot's email, repeatedly explained its copyright concerns to Dr. Martinez and asked Dr. Martinez to remove any copyright protected mathematics problems from her materials. See Kakar Hearing Testimony.

19. On January 26, 2010, Vice President Elliot sent Dr. Martinez an email outlining MCCCCD's concerns regarding Dr. Martinez's potential copyright infringement. MCCCCD Exhibit List # 24 (January 26, 2010 email).

20. On January 28, 2010, MCCCCD in-house-counsel Margaret McConnell discussed copyright compliance with Dr. Martinez telephonically. MCCCCD Exhibit List # 25 (January 28, 2010 email).

21. Dr. Martinez did not benefit from the multiple MCCCCD copyright information sessions noted above.

22. PC's own expert witness, Sean Garrison, testified that under the "Fair Use" doctrine, someone could lawfully copy from a copyrighted textbook without either using or purchasing the textbook.

23. On February 5, 2010, Vice President of Academic Affairs Casandra Kakar, Interim Vice President of Administrative Services Paul DeRose, and Dr. Martinez met to discuss Dr. Martinez's alleged misuse of copyrighted materials. MCCCCD Exhibit List # 26 (February 12, 2010 email).

24. Dr. Martinez has not used any of the four sets of "lecture notes" since the Spring of 2010 when PC first raised its concerns regarding the notes.

25. On April 15, 2010, PC Librarian Ann Roselle conducted a personalized one-on-one copyright training session with Dr. Martinez. MCCCCD Exhibit List # 28 (Copyright PowerPoint Presentation). See also, Kakar Hearing Testimony.

26. When Dr. Martinez met with the librarian, the librarian told Dr. Martinez that Dr. Martinez knew as much about copyright law as she did. See Martinez Hearing Testimony.

27. Following the revocation of Dr. Martinez's copying privileges, Dr. Martinez was required to submit her copy requests to Mathematics Department Chairperson Mr. Sueyoshi so that Mr. Sueyoshi could review her materials for possible copyright violations prior to copying and distribution to students. MCCCCD Exhibit List # 8 (April 2, 2010 Directive).

28. Dr. Martinez sought and obtained a form of written permission from the publisher of the textbook, Sullivan & Sullivan's "Precalculus," to copy materials from their book after PC accused her of violating copyright law.

29. On or around April 19, 2010, Dr. Martinez attempted to bypass the copying restrictions by having an adjunct mathematics Professor, Johnny Santellan, make 24 sets of copies of her "Lecture Notes" for distribution to her mathematics students without obtaining prior approval from the Mathematics Department Chairperson. MCCCCD Exhibit List # 12 (Sueyoshi Decl., ¶9); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 223:11-224:21).

30. Because Dr. Martinez did not feel she was able to obtain reliable guidance regarding copyright compliance from the District, she sought advice from a private intellectual property attorney regarding the issue, Mr. Frederic Bellamy.

31. Mr. Bellamy reviewed the first two sets of Dr. Martinez's "lecture notes" and concluded that they did not violate copyright law because they fell under the "Fair Use" doctrine.

32. Mr. Bellamy based his conclusion that Dr. Martinez did not violate copyright law on the opinion that the portion of material that Dr. Martinez copied from the Sullivan & Sullivan Precalculus textbook was very small, that she used the copied materials exclusively for educational purposes without any profit motive, that the content of the copied material consisted of mathematics problems that are arguably not subject to copyright in the first place, and that the small portion of the textbook that Dr. Martinez copied did not adversely impact the potential market for the textbook.

33. At the hearing, another lawyer practicing in the area of intellectual property law, Sean Garrison, testified on behalf of PC. In contrast to Mr. Bellamy, Mr. Garrison testified at the hearing that the first three sets of Dr. Martinez's lecture notes violated copyright law.

34. In contrast to his testimony at the hearing of November 18, 2013, in his written report Mr. Garrison concluded only that the first three sets of Dr. Martinez's lecture notes subjected the District "to a serious risk of a copyright infringement claim." See District Exhibit 6, p. 0002.

35. MCCCCD invited Dr. Martinez to a copyright workshop that was held on March 1, 2010 at PC. Dr. Martinez chose not to attend the workshop. MCCCCD Exhibit List # 10 (Solley Decl., ¶11).

36. PC President Anna Solley, on December 9, 2010, concluded that Dr. Martinez's alleged misconduct posed an unacceptable legal risk of a copyright infringement claim and imposed restrictions on Dr. Martinez's photocopying privileges. MCCCCD Exhibit List # 10 (Solley Decl., ¶12).

37. MCCCCD sought a legal opinion from an outside copyright expert, attorney Sean Garrison. MCCCCD Exhibit List # 10 (Solley Decl., ¶ 14); MCCCCD Exhibit List # 7 (Sean Garrison October 28, 2010 Memo).

38. According to Mr. Garrison, the third set of "lecture notes" appeared to have 13 mathematics problems copied from two other mathematics textbooks.

39. Mr. Garrison testified that he was certain that Dr. Martinez has committed copyright infringement. See Garrison Hearing Testimony. In reaching this conclusion, Mr. Garrison reviewed thousands of pages of materials including nearly 300 pages of Dr. Martinez's lecture notes and three separate copyrighted mathematics textbooks. MCCCCD Exhibit List # 6 (Sean Garrison April 19, 2013 Report); *see also* Garrison Hearing Testimony.

40. In reliance upon Mr. Garrison's recommendations, PC President Anna Solley issued a December 9, 2010 directive that imposed further restrictions on Dr. Martinez's copying

privileges. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 10 (Solley Decl., ¶15).

41. The December 9, 2010 Directive prohibited Dr. Martinez from utilizing any course materials of her own creation. MCCCCD Exhibit List # 9 (December 9, 2010 Directive). Instead, Dr. Martinez was required to only use course materials that are "approved by the mathematics department" or that are "available in the bookstore for sale to students and that are authored by persons other than [Dr. Martinez]." MCCCCD Exhibit List # 9 (December 9, 2010 Directive).

42. The December 9, 2010 Directive further required Dr. Martinez to submit her photocopy requests to the Mathematics Department Chair for his approval. MCCCCD Exhibit List # 9 (December 9, 2010 Directive).

43. Despite MCCCCD's frequent discussions with Dr. Martinez regarding the importance of complying with copyright laws and the December 9, 2010 Directive, Dr. Martinez continued to attempt to ignore the directive. See Kakar Hearing Testimony.

44. At the beginning of the Fall 2012 semester (on or about August 21-23, 2012), Dr. Martinez informed her students that they were not required to purchase a course textbook and that she would provide them with her own course materials in lieu of a textbook. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

45. In fall of 2012, Dr. Martinez sought to have her lecture notes photocopied off campus at a nearby Staples store. This practice is inconsistent with the December 9, 2010 Directive. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

46. Dr. Martinez did not submit her Fall 2012 materials to Mathematics Department Chairperson Mr. Sueyoshi for approval. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

47. Dr. Martinez made copies of her course materials at an off-campus Staples store and distributed them to students for \$11 per copy. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

48. The \$11 course material fee was paid directly to Dr. Martinez by students. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

49. PC accused Dr. Martinez of violating the District's "cash handling" rules by distributing these course materials to her students if the students reimbursed her for her out-of-pocket copying costs.

50. PC subsequently claimed that Dr. Martinez violated the District's "cash handling" policies by seeking reimbursement for the copies.

51. MCCCCD's policies prohibit instructors from having "any financial interest in or receiv[ing] compensation from the sale of any unpublished instructional materials required or

suggested for a class that the instructor teaches." MCCCCD Exhibit List # 41 (Residential Faculty Policies, 3.2.4).).

52. Dr. Martinez failed to follow the protocol set forth in the December 9, 2010 Directive in copying her Fall 2012 course materials. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

53. Dr. Martinez distributed course materials directly to students in her Fall 2012 MAT151 class. MCCCCD Exhibit List # 4-5 (Martinez Depo. pp. 232:19-233:21).

54. The MCCCCD Administration learned of Dr. Martinez's unauthorized distribution of course materials to students after one of Dr. Martinez's MAT151 students complained to Mathematics Department Chairperson Mr. Sueyoshi. The student complained that Dr. Martinez refused to provide her with a receipt for the purchased course materials. See Kakar Hearing Testimony.

55. Upon learning that Dr. Martinez had distributed course materials to students allegedly in violation of MCCCCD's cash handling policy, President Solley instructed Martinez to immediately issue refunds to her students via personal check. MCCCCD Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony.

56. On or around October 18, 2012, President Solley and Dr. Kakar met with Dr. Martinez to explain the seriousness of Dr. Martinez's alleged cash handling violation. MCCCCD Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony. In addition, President Solley and Dr. Kakar prepared a written counseling memo dated October 18 2010 for Dr. Martinez regarding her alleged violation of cash handling rules. Dr. Martinez was provided with a copy of the October 18, 2010 counseling notice and President Solley proceeded to explain to Dr. Martinez the seriousness of the alleged cash handling violations and the requirement that Dr. Martinez issue reimbursements to her students. MCCCCD Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony.

57. Several months later, on or around January 9, 2013, Dr. Kakar learned that most (if not all) students had not yet received refunds from the Dr. Martinez. MCCCCD Exhibit List # 39 (various emails regarding student refunds). As a result, Dr. Kakar instructed Dr. Martinez to provide copies of refund checks by January 18, 2013. MCCCCD Exhibit List # 39 (various emails regarding student refunds).

58. Dr. Martinez failed to produce a single refund check by the January 18, 2013 deadline. MCCCCD Exhibit List # 39 (various emails regarding student refunds).

59. Dr. Martinez did not think that she had violated any District rule in reference to the copies. Therefore, she declined to follow the December 9, 2010 order because she believed she was not required to do so under any District rule.

60. At the November 18, 2013 hearing, Dr. Martinez did not provide any explanation for her refusal to comply with the October 18, 2012 and January 9, 2013 directives to issue refunds to her students. See Martinez Hearing Testimony.

61. At the hearing Dr. Martinez testified that she had made a "mistake" and, in retrospect, should have complied with President Solley's instructions. See Martinez Hearing Testimony.

62. On or around August 9, 2013, MCCCDC Chancellor Rufus Glasper sent Dr. Martinez a letter informing her that MCCCDC was proceeding with termination proceedings. Included with this letter was a statement of charges that summarized the particular violations Dr. Martinez had been charged with (hereinafter referred to as "Statement of Charges.") MCCCDC Exhibit List # 1 (Statement of Charges).

CONCLUSIONS

63. PC failed to carry its burden of proof relating to violation of MCCCDC's cash handling rules found in MCCCDC Administrative Regulations 1.17, violation of Residential Policy Manual 3.2.4 (relating to financial interests in unpublished materials), violation of U.S. Copyright Law and fair use guidelines, and violation of MCCCDC Administrative Regulations 3.2.4 and 3.2.5 related to copyright regulations.

64. Notwithstanding their education, their experience, and their good faith, Mr. Bellamy and Mr. Garrison disagreed as to whether or not Dr. Martinez violated copyright law. Therefore, it is inconclusive as to whether Dr. Martinez intentionally and/or inadvertently violated federal copyright law.

65. It is inconclusive as to whether or not Dr. Martinez violated the "cash handling" policies of MCCCDC.

66. Dr. Martinez willfully and intentionally failed to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley.

67. Dr. Martinez conceded that she never complied with President Solley's clear directive to issue refunds to her students. Although Dr. Martinez now regrets her decision not to comply with President Solley's directive, she has never claimed that she did not understand the instructions or that the instructions were beyond the scope of management's authority. Viewed in light of these facts, Martinez's claim that she "made a mistake" is an admission of willful insubordination.

68. By failing to comply with President Solley's directive to issue refunds to her students, Dr. Martinez violated MCCCDC Administrative Regulation 6.7.1 which prohibits the "[w]illful and intentional violation of any...MCCCDC administrative regulation that affects the employee's ability to perform his or her job."

69. By failing to comply with President Solley's directive to issue refunds to students, Dr. Martinez violated MCCCDC Administrative Regulation 6.7.3 which prohibits the "[w]illful and intentional failure to perform job duties that have first been communicated to an employee and are within the employee's scope of employment."

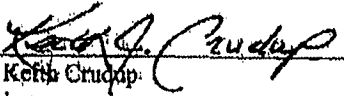
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RECOMMENDATION

70. We hereby recommend that the Governing Board deny President Solley's termination request and allow Dr. Martinez to continue her MCCCED employment.

71. Per MCCCED Administrative Regulation 6.7 indicating that violation of any Employment Standards "constitutes grounds for disciplinary action, *up to* [emphasis added] and including termination," we hereby recommend that the Governing Board retain Dr. Martinez.

It is ordered so, at Mesa, Arizona, this 9th day of December, 2013.



Dr. Keith Crudup
Chairperson
On Behalf of the Hearing Committee,
Dr. Nora Reyes and Dr. Carlos Caire

3.10.2.1.

Not later than March 1st for all members in Probationary status. By October 1st of the fourth and fifth academic years, the Probationary Faculty member should be advised in writing, by the Department/DIVision Chair or appropriate Vice President, or Vice President's designee of any deficiencies which may, if uncorrected, result in non-renewal of contract, and the Probationary member shall have the remainder of the academic year to address said deficiencies.

3.10.2.2.

Fifth-year Probationary members will be notified in writing of any deficiencies arising after October 1st. The probationary period may be extended one additional semester for the affected Probationary member per Section 1.2. Failure of the Probationary member to correct said deficiencies in the additional semester will result in their non-renewal at the end of that semester.

3.10.3.

Within fourteen (14) days of the receipt of the Chancellor's note of intent to recommend nonrenewal, the member shall, upon request to the Chancellor, be orally advised of the reasons that contributed to the decision to recommend nonrenewal of employment. Such advisement shall be given by the appropriate College President within fourteen (14) days of receipt of the Faculty member's written request.

3.10.4.

Within fourteen (14) days of the College President's advisement of the reasons for nonrenewal, the Chancellor shall honor the Faculty member's written request to the Chancellor to confirm, in writing, the reasons given in advisement of nonrenewal. Such written confirmation shall be delivered to the member's place of residence via certified mail, registered mail, or personal service within fourteen (14) days of the Chancellor's receipt of the request.

3.10.5.

The process referenced here above shall be completed prior to any nonrenewal recommendation to the Governing Board, for action prior to April 30th.

3.11. Suspension of a Faculty Member

3.11.1.

Upon a written statement of charges formulated by the Chancellor, charging a Faculty member of the MCCC, the Chancellor, or his/her designee, may immediately suspend the Faculty member and give notice of suspension. At the option of the Faculty member, the MCCC Faculty Association President will be notified of this action.

3.11.2.

The notice of suspension shall be in writing and be served upon the Faculty member, personally or by U.S. (registered or certified) mail, addressed to the Faculty member at his/her place of residence as recorded in the MCCC records.

3.11.3.

Any Faculty member who has been suspended pursuant to this Section will normally be paid his/her regular salary during the period of suspension. A suspension without pay will occur only upon advice of General Counsel. If payment is to be withheld, the Vice Chancellor of Human Resources will first consult with and advise the member and, at the option of the Faculty member, the Faculty Association President regarding the rationale for that action.

3.12. Administrative Leaves of Absence

3.12.1. Criminal Complaint

3.12.1.1.

If a Faculty member is charged by criminal complaint, information, or indictment with any criminal offense, which would be cause for dismissal, the Chancellor or designee may immediately place the member on compulsory leave of absence for a period of time extending for not more than ten (10) days after the date of entry of judgment in the proceedings.

3.12.1.2.

Pay during this period will be based on the same consideration as in Section 3.13.3.

3.12.2. Complaints—Other Than Criminal

3.12.2.1.

The Vice Chancellor of Human Resources may, if it is appropriate, place a Faculty member on paid administrative leave of absence. At the option of the Faculty member, the MCCC Faculty Association President will be advised.

3.12.2.2.

Pay during this period will be based on the same consideration as in Section 3.11.3.

3.13. Faculty Member Dismissal—Probationary and Appointive

A Faculty member who is recommended, by the College President, through the Chancellor, to the Governing Board, for dismissal shall have access to the following due-process procedures.

3.13.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCC Legal Office, may recommend, to the Chancellor, that there exists prima facie cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCC records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

Exhibit D



MARICOPA
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Vice Chancellor
Human Resources

2411 W. 14th Street, Tempe, Arizona 85281-6942 • T 480.731.8103 • F 480.731.8120 • www.maricopa.edu

April 14, 2014

Dr. Cleopatria Martinez
7030 N. 21st Street
Phoenix, AZ 85020

Re: Update to Notice of Suspension without Pay

Dear Dr. Martinez:

Your Notice of Suspension without Pay, dated February 10, 2014, has been updated. The February 10th notice advised you that your suspension without pay would begin on March 1, 2014 and end on May 15, 2015. The dates of your suspension without pay have been revised as follows:

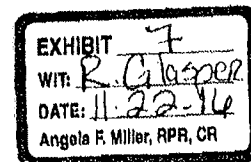
Your suspension without pay from your position as Mathematics faculty at Phoenix College will begin on April 15, 2014 and end on May 15, 2015. Your teaching responsibilities and pay will resume Fall semester 2015, should you choose to return.

Although your paid administrative leave will cease after this Friday, April 11, 2014, and your unpaid suspension will begin on April 12, 2014, your benefits will continue through April 30, 2014. Zenith Administrators will send you a Cobra Notice within fourteen days of the end of your coverage.

Sincerely,

Rufus Glasper, Ph.D., CPA
Chancellor

Cc: Dr. Anna Solley
LaCoya Shelton-Jackson, VCHR
Personnel File



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EXHIBIT 36




**MARICOPA COMMUNITY COLLEGES
OFFICE OF THE CHANCELLOR**

MEMORANDUM

DATE: February 10, 2014

TO: Dana Saar, President
MCCCD Governing Board

FROM: Rufus Glasper


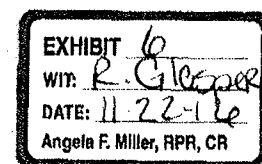
SUBJECT: Recommendation to adopt hearing committee's recommendation
regarding dismissal, Dr. Cleopatria Martinez

On August 9, 2013, I notified Dr. Cleopatria Martinez, in writing that I intended to recommend to the MCCCD Governing Board that she be dismissed from her position as Mathematics Faculty at Phoenix College (copy attached). This recommendation was based on a statement of charges against Dr. Martinez prepared by Dr. Anna Solley, President of Phoenix College, and reviewed and forwarded to me by James N. Bowers, Interim Vice Chancellor for Human Resources (copy attached).

Pursuant to Section 3.15.3 of the RFP Policy Manual, Dr. Martinez invoked her right to a hearing on her dismissal. This hearing was held on November 18, 2013 pursuant to section 3.15.2 – 3.15.7 of the RFP Policy Manual.

I received the Hearing Committee's Summary of Evidence, Findings of Fact, Conclusions of Law and Recommendation on December 9, 2013. I was unable to schedule a meeting with the hearing committee because of the winter break, and the parties graciously extended the time for my decision to permit me this opportunity. On January 23, 2014, pursuant to section 3.15.8 of the RFP Policy Manual, I met with the Hearing Committee to clarify questions I had concerning their recommendations.

Now, as required by section 3.15.8 of the RFP Policy Manual, I am providing the Governing Board with my recommendation regarding dismissal along with the Summary of the Evidence and a copy of the Findings of Fact, Conclusions of Law and final recommendations of the Hearing Committee.



Page 2

Based on all of the information referred to above and attached hereto, I accept the written recommendation of the committee that Dr. Martinez NOT be dismissed. After consulting with the committee I have determined that a lesser sanction authorized by the RFP and within my sole discretion as Chancellor is appropriate and warranted.

Attachments

cc: MCCCCD Governing Board Members
Mr. Jim Bowers
Dr. Anna Solley
Mr. Payneet Uppal
Mr. Steve Montoya



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Rufus Glasper
Chancellor

2411 W. 14th Street, Tempe, Arizona 85281-6942 • T 480.731.8100 • F 480.731.8120 • r.glasper@domail.maricopa.edu

February 10, 2014

Dr. Cleopatria Martinez
7030 N. 21st Street
Phoenix, AZ 85020

Re: Notice of Suspension without Pay

Dear Dr. Martinez:

Based upon the attached written statement of charges, I have decided to suspend your employment under my sole authority as Chancellor pursuant to section 3.11 of the Residential Faculty Policies. The purpose of this letter to notify you that your suspension from your position as Mathematics faculty at Phoenix College will begin on March 1, 2014 and end on May 15, 2015. Your teaching responsibilities and pay will resume Fall semester, 2015 unless you choose to retire (see below).

Having sought the advice of the General Counsel as required by section 3.11.3 of the RFP, I am satisfied that your procedural rights concerning the grounds for suspension have been met. The basis for this action is the unanimous finding of an independent hearing committee that you willfully violated the district policies set forth in the statement of charges and that I have the authority to suspend your employment without pay.

Also under the terms of subsection 3.11.3, the interim Vice Chancellor for Human Resources will offer to consult with you (and the Faculty Association President, if you choose) concerning the rationale for this decision. If you accept his invitation, he will deliver this notice and attachment after the meeting. If you decline your opportunity to consult with him, he will have the decision delivered to you in accordance with the policy.

You may voluntarily retire from your position in lieu of this suspension without pay. If you elect to do so, you will remain on paid administrative leave and be paid through May 9, 2014.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Rufus Glasper'.

Rufus Glasper, Ph.D., CPA
Chancellor

A handwritten signature in cursive script, appearing to read 'Lee Combs'.

Lee Combs
General Legal Counsel

cc: Dr. Anna Solley
Mr. Jim Bowers

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February 10, 2014

Dr. Cleopatria Martinez
7030 N. 21st Street
Phoenix, AZ 85020

Re: Statement of Charges

Based upon the findings of the hearing committee which are attached to this statement, and the record of their proceedings, I have determined as follows:

In teaching your Phoenix College mathematics students, you did not use a textbook. Instead, you prepared your own course materials you called your "lecture notes," copied them on Phoenix College equipment and at College expense, and distributed them to your students without charge. In preparing your notes, you copied problems from copyright protected textbooks and inserted them into your lecture notes without attribution to, or permission of, the copyright holders.

In early 2010, Phoenix College discovered that you may have exposed MCCCDC to liability for copyright infringement, notified you of the concerns, and provided training and legal counsel. To protect the College from the risk of liability, in April 2010 President Solley restricted your copying privileges, allowing only those copy projects approved by your department chair. You attempted to bypass these restrictions. The chair filed a complaint that was referred to an administrative evaluation team for investigation. The team, including your own appointee, unanimously concluded that your lecture notes violated copyright and that you had failed to follow President Solley's direction.

President Solley considered this history, and on December 10, 2010 imposed a stricter restriction in accordance with the RFP. She directed you to use only course materials approved by the department, that were available in the bookstore for sale to the students, and that were authored by persons other than yourself. She also required that you provide proper attribution of authorship of the materials by others and show evidence that you had purchased the materials or otherwise received permission to use them from the author. She restricted your authority to copy to materials approved by your department chair after two days' notice and written proof that you had permission of the author to copy the materials.

In concluding her directive, Dr. Solley stated, "This direction is intended to communicate job duties to you within the meaning of Governing Board employment standard A4.3. In accordance with that section of the All Employment Policy Manual, willful and intentional violation of these instructions will be considered grounds for disciplinary action, up to and including dismissal."

Despite MCCCDC's frequent discussions with you regarding the importance of complying with copyright laws and the December 9, 2010 directive, you continued to attempt to ignore the directive. At the beginning of the Fall 2012 Semester, you informed your students that they were not required to purchase a course textbook and that you would provide them with your own course materials in lieu of a textbook. In violation of President Solley's December, 2010 directive, you made copies at a local Staples store of course materials that had not been approved by your department chair, and distributed them to your students for \$11 per copy, payable directly to you. This distribution violated Dr. Solley's directive.

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Page 2

You decided unilaterally that no district policy required you to comply with the job duties communicated to you in writing by Dr. Solley, so you violated them. However, her directive was issued under section 3.7.4 of the RFP. This section authorizes a president to take "any appropriate action" after receiving the results of the administrative review. In considering the appropriate action, Dr. Solley relied on the advice of expert counsel to assess the risk of liability represented by your behavior, on your documented history of evasion of her prior efforts to protect MCCCDC, and the unanimous report of the administrative evaluation team. You did not file a timely appeal or grievance seeking review of this directive.

An additional concern arose after a student brought the copying to PC's attention, complaining that you did not provide receipts for the material charges. MCCCDC Administrative Regulation 1.12. states as follows:

"1.12.2 Authorization

Prior to participating in the sale of products or services, Revenue and Expenditure categories must be included in a program's budget, and approved by the Governing Board during the annual budget adoption process, or as legally changed during a fiscal year.

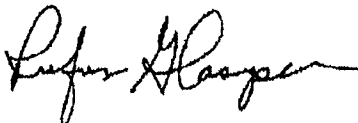
1.12.3 Fees

Fees exchanged for products or services produced through an educational, training, or service activity shall be pre-approved by the Governing Board."

Phoenix College determined that your course materials charge was not included in the adopted budget or pre-approved by the Governing Board. Dr. Solley therefore issued a corrective action that directed you to issue refunds to the students for the unauthorized charge. You refused, and offered no explanation or justification of your decision to the hearing committee. The hearing committee found your failure to comply with the corrective action was in violation of Administrative Regulation 6.7.1 and Administrative Regulation 6.7.3.

Therefore, for purposes of RFP Section 3.13, this letter will serve as a statement of charges that you are in violation of Administrative Regulation 6.7.1 and Administrative Regulation 6.7.3. In accordance with these regulations, disciplinary action up to and including termination is warranted. I accept the hearing committee's recommendation that you should not be dismissed from employment. However, I believe suspension without pay for a substantial time is the appropriate sanction.

Sincerely,

A handwritten signature in black ink, appearing to read "Rufus Glasper". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rufus Glasper, Ph.D. CPA
Chancellor

BEFORE THE GOVERNING BOARD OF THE
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

MARICOPA COUNTY COMMUNITY)	
COLLEGE DISTRICT,)	HEARING COMMITTEE
)	
v.)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND RECOMMENDATION
<u>DR. CLEOPATRIA MARTINEZ</u>)	

Pursuant to the October 16, 2013 Scheduling Order, having reviewed all of the parties' pleadings and exhibits and conducting a hearing on November 18, 2013, the Hearing Committee (by majority vote) hereby submits the following Findings of Fact, Conclusions of Law and Recommendation.

FINDINGS OF FACT

1. After having taught mathematics full-time for ten years at Denver Community College, Dr. Cleopatria Martinez moved to Arizona and started teaching mathematics full-time at Scottsdale Community College on January 1, 1985.

2. Dr. Martinez voluntarily transferred to Phoenix College ("PC") in 1995 and has been teaching mathematics there full-time ever since.

3. Dr. Martinez elected to voluntarily transfer to PC because there were very few minority students attending Scottsdale Community College, and she wanted to use her bilingual education skills in the mathematics classroom to better educate the large number of minority students attending PC.

4. Dr. Martinez was elected by her colleagues to serve as the Chairperson of the Mathematics Department of PC from 2002 to 2005.

5. In early 2010, PC discovered that Dr. Cleopatria Martinez may have exposed MCCCCD to potential liability for copyright infringement.

6. Dr. Martinez testified that, during her twenty-eight years of teaching mathematics in the MCCCCD system, she and her colleagues in the Mathematics Departments of both Scottsdale Community College and PC routinely borrowed mathematics problems from other mathematicians to use in their student handouts for educational purposes on a not for profit basis.

7. Dr. Martinez testified, without rebuttal, that this borrowing of mathematics problems is a longstanding, widespread custom throughout the District and academia at large.

8. Instead of requiring her mathematics students to purchase textbooks, Dr. Martinez prepared her own course materials which she called her "Lecture Notes" and distributed them to

her students. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 77:17-78:15, 106:16-108:16, 121:25-140:13, 132:16-137:25).

9. Dr. Martinez read the Copyright Act of 1976 and believed that it authorized her to use small portions of other scholars' work under the "Fair Use" doctrine because she was using it only for classroom teaching purposes on a not for profit basis and her use of the material did not undermine the potential market for the other scholar's work.

10. Per the "Fair Use" doctrine of the Copyright Act, the "use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." 17 U.S.C. § 107.

11. Dr. Martinez copied problems from copyright protected textbooks and inserted them into her course materials. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 106:16-108:16).

12. Dr. Martinez, in her Basic Arithmetic (MAT082) course, copied problems directly from a copyrighted textbook entitled "Basic Mathematics" and inserted them into her "MAT 082 Basic Arithmetic Spring 2010" course materials which she distributed to students. MCCCCD Exhibit List # 20 (Full-Sized Excerpted Comparison). She did not seek or obtain permission from the copyright holder.

13. Dr. Martinez also copied problems directly from the Sullivan & Sullivan "Precalculus" textbook and inserted them into her "MAT182 Trigonometry Spring 2010" course materials. MCCCCD Exhibit List # 22 (Full-Sized Excerpted Comparison). She did not seek or obtain permission from the copyright holder.

14. Dr. Martinez did not require her students to purchase textbooks in her Spring MAT082 Course. MCCCCD Exhibit List # 18 (email from Dr. Martinez stating "I indicated in my syllabus that, instead of a published textbook, I was using lecture notes in my MAT082 class.")

15. Dr. Martinez did not require her students to purchase textbooks in her Spring MAT182 Course. See Dr. Martinez's hearing testimony (conceding that students were not required to purchase a textbook in her Spring 2010 MAT182 course).

16. On or around January 12, 2010, MCCCCD's Vice President of Academic Services, Ronnie Elliot, sent Dr. Martinez an email notifying her that there were alleged copyright related problems with the materials she had printed for the Fall 2009 and Spring 2010 semesters. MCCCCD Exhibit List # 23 (January 12, 2010 email). The materials in question were packets of course materials for Dr. Martinez's MAT182 and MAT187 courses and contained mathematics problems and graphs that were taken from copyrighted textbooks. MCCCCD Exhibit List # 11 (Ronnie Elliot Declaration, ¶¶8-9); MCCCCD Exhibit List # 16 (MAT182 course packet); MCCCCD Exhibit List # 7 (Sean Garrison October 28, 2010 Memorandum).

17. Dr. Martinez used three of the four packets of "lecture notes" in the Spring of 2010 in two pre-calculus classes. See District Exhibit 6, parts 1-3.

18. The MCCCCD administration, following Vice President Elliot's email, repeatedly explained its copyright concerns to Dr. Martinez and asked Dr. Martinez to remove any copyright protected mathematics problems from her materials. See Kakar Hearing Testimony.

19. On January 26, 2010, Vice President Elliot sent Dr. Martinez an email outlining MCCCCD's concerns regarding Dr. Martinez's potential copyright infringement. MCCCCD Exhibit List # 24 (January 26, 2010 email).

20. On January 28, 2010, MCCCCD in-house-counsel Margaret McConnell discussed copyright compliance with Dr. Martinez telephonically. MCCCCD Exhibit List # 25 (January 28, 2010 email).

21. Dr. Martinez did not benefit from the multiple MCCCCD copyright information sessions noted above.

22. PC's own expert witness, Sean Garrison, testified that under the "Fair Use" doctrine, someone could lawfully copy from a copyrighted textbook without either using or purchasing the textbook.

23. On February 5, 2010, Vice President of Academic Affairs Casandra Kakar, Interim Vice President of Administrative Services Paul DeRose, and Dr. Martinez met to discuss Dr. Martinez's alleged misuse of copyrighted materials. MCCCCD Exhibit List # 26 (February 12, 2010 email).

24. Dr. Martinez has not used any of the four sets of "lecture notes" since the Spring of 2010 when PC first raised its concerns regarding the notes.

25. On April 15, 2010, PC Librarian Ann Roselle conducted a personalized one-on-one copyright training session with Dr. Martinez. MCCCCD Exhibit List # 28 (Copyright PowerPoint Presentation). See also, Kakar Hearing Testimony.

26. When Dr. Martinez met with the librarian, the librarian told Dr. Martinez that Dr. Martinez knew as much about copyright law as she did. See Martinez Hearing Testimony.

27. Following the revocation of Dr. Martinez's copying privileges, Dr. Martinez was required to submit her copy requests to Mathematics Department Chairperson Mr. Sueyoshi so that Mr. Sueyoshi could review her materials for possible copyright violations prior to copying and distribution to students. MCCCCD Exhibit List # 8 (April 2, 2010 Directive).

28. Dr. Martinez sought and obtained a form of written permission from the publisher of the textbook, Sullivan & Sullivan's "Precalculus," to copy materials from their book after PC accused her of violating copyright law.

29. On or around April 19, 2010, Dr. Martinez attempted to bypass the copying restrictions by having an adjunct mathematics Professor, Johnny Santellan, make 24 sets of copies of her "Lecture Notes" for distribution to her mathematics students without obtaining prior approval from the Mathematics Department Chairperson. MCCCCD Exhibit List # 12 (Sueyoshi Decl., ¶9); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 223:11-224:21).

30. Because Dr. Martinez did not feel she was able to obtain reliable guidance regarding copyright compliance from the District, she sought advice from a private intellectual property attorney regarding the issue, Mr. Frederic Bellamy.

31. Mr. Bellamy reviewed the first two sets of Dr. Martinez's "lecture notes" and concluded that they did not violate copyright law because they fell under the "Fair Use" doctrine.

32. Mr. Bellamy based his conclusion that Dr. Martinez did not violate copyright law on the opinion that the portion of material that Dr. Martinez copied from the Sullivan & Sullivan Precalculus textbook was very small, that she used the copied materials exclusively for educational purposes without any profit motive, that the content of the copied material consisted of mathematics problems that are arguably not subject to copyright in the first place, and that the small portion of the textbook that Dr. Martinez copied did not adversely impact the potential market for the textbook.

33. At the hearing, another lawyer practicing in the area of intellectual property law, Sean Garrison, testified on behalf of PC. In contrast to Mr. Bellamy, Mr. Garrison testified at the hearing that the first three sets of Dr. Martinez's lecture notes violated copyright law.

34. In contrast to his testimony at the hearing of November 18, 2013, in his written report Mr. Garrison concluded only that the first three sets of Dr. Martinez's lecture notes subjected the District "to a serious risk of a copyright infringement claim." See District Exhibit 6, p. 0002.

35. MCCCCD invited Dr. Martinez to a copyright workshop that was held on March 1, 2010 at PC. Dr. Martinez chose not to attend the workshop. MCCCCD Exhibit List # 10 (Solley Decl., ¶11).

36. PC President Anna Solley, on December 9, 2010, concluded that Dr. Martinez's alleged misconduct posed an unacceptable legal risk of a copyright infringement claim and imposed restrictions on Dr. Martinez's photocopying privileges. MCCCCD Exhibit List # 10 (Solley Decl., ¶12).

37. MCCCCD sought a legal opinion from an outside copyright expert, attorney Sean Garrison. MCCCCD Exhibit List # 10 (Solley Decl., ¶ 14); MCCCCD Exhibit List # 7 (Sean Garrison October 28, 2010 Memo).

38. According to Mr. Garrison, the third set of "lecture notes" appeared to have 13 mathematics problems copied from two other mathematics textbooks.

39. Mr. Garrison testified that he was certain that Dr. Martinez has committed copyright infringement. See Garrison Hearing Testimony. In reaching this conclusion, Mr. Garrison reviewed thousands of pages of materials including nearly 300 pages of Dr. Martinez's lecture notes and three separate copyrighted mathematics textbooks. MCCCCD Exhibit List # 6 (Sean Garrison April 19, 2013 Report); *see also* Garrison Hearing Testimony.

40. In reliance upon Mr. Garrison's recommendations, PC President Anna Solley issued a December 9, 2010 directive that imposed further restrictions on Dr. Martinez's copying

privileges. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 10 (Solley Decl., ¶15).

41. The December 9, 2010 Directive prohibited Dr. Martinez from utilizing any course materials of her own creation. MCCCCD Exhibit List # 9 (December 9, 2010 Directive). Instead, Dr. Martinez was required to only use course materials that are "approved by the mathematics department" or that are "available in the bookstore for sale to students and that are authored by persons other than [Dr. Martinez]." MCCCCD Exhibit List # 9 (December 9, 2010 Directive).

42. The December 9, 2010 Directive further required Dr. Martinez to submit her photocopy requests to the Mathematics Department Chair for his approval. MCCCCD Exhibit List # 9 (December 9, 2010 Directive).

43. Despite MCCCCD's frequent discussions with Dr. Martinez regarding the importance of complying with copyright laws and the December 9, 2010 Directive, Dr. Martinez continued to attempt to ignore the directive. See Kakar Hearing Testimony.

44. At the beginning of the Fall 2012 semester (on or about August 21-23, 2012), Dr. Martinez informed her students that they were not required to purchase a course textbook and that she would provide them with her own course materials in lieu of a textbook. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

45. In fall of 2012, Dr. Martinez sought to have her lecture notes photocopied off campus at a nearby Staples store. This practice is inconsistent with the December 9, 2010 Directive. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

46. Dr. Martinez did not submit her Fall 2012 materials to Mathematics Department Chairperson Mr. Sueyoshi for approval. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

47. Dr. Martinez made copies of her course materials at an off-campus Staples store and distributed them to students for \$11 per copy. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

48. The \$11 course material fee was paid directly to Dr. Martinez by students. MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

49. PC accused Dr. Martinez of violating the District's "cash handling" rules by distributing these course materials to her students if the students reimbursed her for her out-of-pocket copying costs.

50. PC subsequently claimed that Dr. Martinez violated the District's "cash handling" policies by seeking reimbursement for the copies.

51. MCCCCD's policies prohibit instructors from having "any financial interest in or receiv[ing] compensation from the sale of any unpublished instructional materials required or

suggested for a class that the instructor teaches." MCCCCD Exhibit List # 41 (Residential Faculty Policies, 3.2.4).).

52. Dr. Martinez failed to follow the protocol set forth in the December 9, 2010 Directive in copying her Fall 2012 course materials. MCCCCD Exhibit List # 9 (December 9, 2010 Directive); MCCCCD Exhibit List # 4-5 (Martinez Depo., pp. 232:19-233:21).

53. Dr. Martinez distributed course materials directly to students in her Fall 2012 MAT151 class. MCCCCD Exhibit List # 4-5 (Martinez Depo. pp. 232:19-233:21).

54. The MCCCCD Administration learned of Dr. Martinez's unauthorized distribution of course materials to students after one of Dr. Martinez's MAT151 students complained to Mathematics Department Chairperson Mr. Sueyoshi. The student complained that Dr. Martinez refused to provide her with a receipt for the purchased course materials. See Kakar Hearing Testimony.

55. Upon learning that Dr. Martinez had distributed course materials to students allegedly in violation of MCCCCD's cash handling policy, President Solley instructed Martinez to immediately issue refunds to her students via personal check. MCCCCD Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony.

56. On or around October 18, 2012, President Solley and Dr. Kakar met with Dr. Martinez to explain the seriousness of Dr. Martinez's alleged cash handling violation. MCCCCD Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony. In addition, President Solley and Dr. Kakar prepared a written counseling memo dated October 18, 2010 for Dr. Martinez regarding her alleged violation of cash handling rules. Dr. Martinez was provided with a copy of the October 18, 2010 counseling notice and President Solley proceeded to explain to Dr. Martinez the seriousness of the alleged cash handling violations and the requirement that Dr. Martinez issue reimbursements to her students. MCCCCD Exhibit List # 3 (October 18, 2012 Counseling Notice); see also Kakar Hearing Testimony.

57. Several months later, on or around January 9, 2013, Dr. Kakar learned that most (if not all) students had not yet received refunds from the Dr. Martinez. MCCCCD Exhibit List # 39 (various emails regarding student refunds). As a result, Dr. Kakar instructed Dr. Martinez to provide copies of refund checks by January 18, 2013. MCCCCD Exhibit List # 39 (various emails regarding student refunds).

58. Dr. Martinez failed to produce a single refund check by the January 18, 2013 deadline. MCCCCD Exhibit List # 39 (various emails regarding student refunds).

59. Dr. Martinez did not think that she had violated any District rule in reference to the copies. Therefore, she declined to follow the December 9, 2010 order because she believed she was not required to do so under any District rule.

60. At the November 18, 2013 hearing, Dr. Martinez did not provide any explanation for her refusal to comply with the October 18, 2012 and January 9, 2013 directives to issue refunds to her students. See Martinez Hearing Testimony.

61. At the hearing Dr. Martinez testified that she had made a "mistake" and, in retrospect, should have complied with President Solley's instructions. See Martinez Hearing Testimony.

62. On or around August 9, 2013, MCCCCD Chancellor Rufus Glasper sent Dr. Martinez a letter informing her that MCCCCD was proceeding with termination proceedings. Included with this letter was a statement of charges that summarized the particular violations Dr. Martinez had been charged with (hereinafter referred to as "Statement of Charges.") MCCCCD Exhibit List # 1 (Statement of Charges).

CONCLUSIONS

63. PC failed to carry its burden of proof relating to violation of MCCCCD's cash handling rules found in MCCCCD Administrative Regulations 1.17, violation of Residential Policy Manual 3.2.4 (relating to financial interests in unpublished materials), violation of U.S. Copyright Law and fair use guidelines, and violation of MCCCCD Administrative Regulations 3.2.4 and 3.2.5 related to copyright regulations.

64. Notwithstanding their education, their experience, and their good faith, Mr. Bellamy and Mr. Garrison disagreed as to whether or not Dr. Martinez violated copyright law. Therefore, it is inconclusive as to whether Dr. Martinez intentionally and/or inadvertently violated federal copyright law.

65. It is inconclusive as to whether or not Dr. Martinez violated the "cash handling" policies of MCCCCD.

66. Dr. Martinez willfully and intentionally failed to follow instructions that were communicated to her when she failed to issue refunds to students as directed by President Solley.

67. Dr. Martinez conceded that she never complied with President Solley's clear directive to issue refunds to her students. Although Dr. Martinez now regrets her decision not to comply with President Solley's directive, she has never claimed that she did not understand the instructions or that the instructions were beyond the scope of management's authority. Viewed in light of these facts, Martinez's claim that she "made a mistake" is an admission of willful insubordination.

68. By failing to comply with President Solley's directive to issue refunds to her students, Dr. Martinez violated MCCCCD Administrative Regulation 6.7.1 which prohibits the "[w]illful and intentional violation of any...MCCCCD administrative regulation that affects the employee's ability to perform his or her job."

69. By failing to comply with President Solley's directive to issue refunds to students, Dr. Martinez violated MCCCCD Administrative Regulation 6.7.3 which prohibits the "[w]illful and intentional failure to perform job duties that have first been communicated to an employee and are within the employee's scope of employment."

///

RECOMMENDATION

70. We hereby recommend that the Governing Board deny President Solley's termination request and allow Dr. Martinez to continue her MCCCED employment.

71. Per MCCCED Administrative Regulation 6.7 indicating that violation of any Employment Standards "constitutes grounds for disciplinary action, *up to* [emphasis added] and including termination," we hereby recommend that the Governing Board retain Dr. Martinez.

It is ordered so, at Mesa, Arizona, this 9th day of December, 2013.



Dr. Keith Crudup

Chairperson

On Behalf of the Hearing Committee,

Dr. Nora Reyes and Dr. Carlos Caire

3.10.2.1.

Not later than March 1st for all members in Probationary status. By October 1st of the fourth and fifth academic years, the Probationary Faculty member should be advised in writing, by the Department/Division Chair or appropriate Vice President, or Vice President's designee of any deficiencies which may, if uncorrected, result in non-renewal of contract, and the Probationary member shall have the remainder of the academic year to address said deficiencies.

3.10.2.2.

Fifth-year Probationary members will be notified in writing of any deficiencies arising after October 1st. The probationary period may be extended one additional semester for the affected Probationary member per Section 1.2. Failure of the Probationary member to correct said deficiencies in the additional semester will result in their non-renewal at the end of that semester.

3.10.3.

Within fourteen (14) days of the receipt of the Chancellor's note of intent to recommend nonrenewal, the member shall, upon request to the Chancellor, be orally advised of the reasons that contributed to the decision to recommend nonrenewal of employment. Such advisement shall be given by the appropriate College President within fourteen (14) days of receipt of the Faculty member's written request.

3.10.4.

Within fourteen (14) days of the College President's advisement of the reasons for nonrenewal, the Chancellor shall honor the Faculty member's written request to the Chancellor to confirm, in writing, the reasons given in advisement of nonrenewal. Such written confirmation shall be delivered to the member's place of residence via certified mail, registered mail, or personal service within fourteen (14) days of the Chancellor's receipt of the request.

3.10.5.

The process referenced here above shall be completed prior to any nonrenewal recommendation to the Governing Board, for action prior to April 30th.

3.11. Suspension of a Faculty Member

3.11.1.

Upon a written statement of charges formulated by the Chancellor, charging a Faculty member of the MCCCC, the Chancellor, or his/her designee, may immediately suspend the Faculty member and give notice of suspension. At the option of the Faculty member, the MCCCC Faculty Association President will be notified of this action.

3.11.2.

The notice of suspension shall be in writing and be served upon the Faculty member, personally or by U.S. (registered or certified) mail, addressed to the Faculty member at his/her place of residence as recorded in the MCCCC records.

3.11.3.

Any Faculty member who has been suspended pursuant to this Section will normally be paid his/her regular salary during the period of suspension. A suspension without pay will occur only upon advice of General Counsel. If payment is to be withheld, the Vice Chancellor of Human Resources will first consult with and advise the member and, at the option of the Faculty member, the Faculty Association President regarding the rationale for that action.

3.12. Administrative Leaves of Absence

3.12.1. Criminal Complaint

3.12.1.1.

If a Faculty member is charged by criminal complaint, information, or indictment with any criminal offense, which would be cause for dismissal, the Chancellor or designee may immediately place the member on compulsory leave of absence for a period of time extending for not more than ten (10) days after the date of entry of judgment in the proceedings.

3.12.1.2.

Pay during this period will be based on the same consideration as in Section 3.13.3.

3.12.2. Complaints—Other Than Criminal

3.12.2.1.

The Vice Chancellor of Human Resources may, if it is appropriate, place a Faculty member on paid administrative leave of absence. At the option of the Faculty member, the MCCC Faculty Association President will be advised.

3.12.2.2.

Pay during this period will be based on the same consideration as in Section 3.11.3.

3.13. Faculty Member Dismissal—Probationary and Appointive

A Faculty member who is recommended, by the College President, through the Chancellor, to the Governing Board, for dismissal shall have access to the following due-process procedures.

3.13.1.

A written statement of charges, formulated by the College President, shall be forwarded to the Vice Chancellor of Human Resources. After review of the charges, the Vice Chancellor, in consultation with the MCCC Legal Office, may recommend, to the Chancellor, that there exists prima facie cause for the dismissal of a Faculty member. The Chancellor shall inform the Governing Board in writing, with a copy of the recommendation being sent (U.S. certified or registered mail) to the Faculty member at his/her place of residence as recorded in the MCCC records. The Vice Chancellor's recommendation will give notice to the Chancellor, Governing Board, and the Faculty member of the intention to formally recommend dismissal, which shall not be sooner than thirty (30) days from the date of the letter, nor later than the end of the current academic year.

EXHIBIT 37

From: Lee Combs <lee.combs@domail.maricopa.edu>
Sent: Monday, February 10, 2014 11:26 AM
To: Steve Montoya
Subject: Re:

I will let his assistant know you want to meet and she will be in touch.

On Mon, Feb 10, 2014 at 11:22 AM, Steve Montoya <stephen@montoyalawgroup.com> wrote:
Lee,

Yes, we would like to meet with the Vice Chancellor to discuss any proposed sanction against Professor Martinez.

Thank you.

Stephen Montoya
Montoya, Jimenez & Pastor, P.A.
3200 North Central Ave., Ste. 2550
Phoenix, Arizona
[602-256-6718](tel:602-256-6718) (phone)
[602-256-6667](tel:602-256-6667) (fax)

On Feb 10, 2014, at 9:15 AM, "Lee Combs" <lee.combs@domail.maricopa.edu> wrote:

The Chancellor's assistant, Linda Back, informs me that the decision to accept the recommendation of the hearing committee should be in everyone's inbox this morning.

The Chancellor decided that suspension is appropriate based on the committee's finding of a willful policy violation. Your client has an opportunity under the procedure to meet with the VCHR to discuss the rationale for this decision before it is delivered, if she wishes. Please consult her and let me know.

--



Lee Combs: General Counsel
2411 West 14th Street, Tempe AZ 85281
phone | [480-731-8878](tel:480-731-8878) • fax | [480-731-8890](tel:480-731-8890)
email | lee.combs@domailmaricopa.edu

On Mon, Feb 10, 2014 at 8:59 AM, Steve Montoya <stephen@montoyalawgroup.com> wrote:
Lee

The Chancellor's decision is past due.

When can we expect it?

Stephen Montoya
Montoya, Jimenez & Pastor, P.A.
3200 North Central Ave., Ste. 2550
Phoenix, Arizona
602-256-6718 (phone)
602-256-6667 (fax)

On Feb 6, 2014, at 3:25 PM, "Lee Combs" <lee.combs@domail.maricopa.edu> wrote:

I am informed the Chancellor has reached a decision on the hearing committee's recommendation that he intends to announce today or tomorrow. There may be additional communications to follow, and I will keep you informed as these come out.

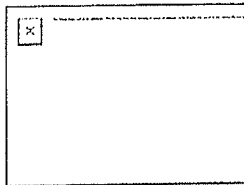
On Mon, Feb 3, 2014 at 11:58 AM, Steve Montoya
<stephen@montoyalawgroup.com> wrote:
Lee,

What is the status of Professor Martinez's case with the Chancellor?

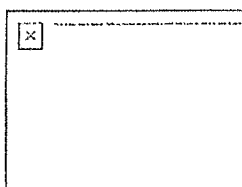
Please let me know.

Thank you.

Stephen Montoya
Montoya, Jimenez & Pastor, P.A.
3200 North Central Ave., Ste. 2550
Phoenix, Arizona
602-256-6718 (phone)
602-256-6667 (fax)



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Lee Combs: General Counsel

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email | lee.combs@domail.maricopa.edu

EXHIBIT 38

Subject: FW: Meeting: Cleopatra Martinez

From: Steve Montoya <stephen@montoyalawgroup.com>
Date: February 24, 2014, 3:58:08 PM MST
To: <darlene.newman@domail.maricopa.edu>
Cc: "Uppal, Pavneet" <puppall@laborlawyers.com>, <lee.combs@domail.maricopa.edu>, Diana Davidson <diana.davidson@domail.maricopa.edu>
Subject: Re: Meeting: Cleopatra Martinez

Ms. Newman,

Unfortunately, Dr. Martinez has had a sudden medical issue that requires that she meet with her physician tomorrow afternoon.

We consequently need to reschedule her appointment with the District presently scheduled for tomorrow afternoon at 2:00 pm.

Stephen Montoya
Montoya, Jimenez & Pastor, P.A.
3200 North Central Ave., Ste. 2550
Phoenix, Arizona
602-256-6718 (phone)
602-256-6667 (fax)

On Feb 19, 2014, at 8:35 AM, "Darlene Newman" <darlene.newman@domail.maricopa.edu> wrote:

Thank you all for reserving time for this meeting. I am confirming this meeting for Tuesday, 2/25 @ 2:00 pm. If there are any changes, please advise us as soon as possible. As of right now, the meeting will be held in the District Office, 6th floor, Legal Conference Room. (2411 W. 14th Street, Tempe).

Thanks!

Darlene Newman
480-731-8119

On Mon, Feb 17, 2014 at 5:17 PM, Uppal, Pavneet <puppall@laborlawyers.com> wrote:

Ms. Newman,

I represent the District in this matter and Mr. Montoya kindly forwarded your email below to my attention. I am available on:

- Wednesday, 2/19 @ 2:00 pm
- Tuesday, 2/25 @ 2:00 pm

Please let me know once you have scheduled a date for this meeting,

Best regards,

Pavneet Uppal

Attorney at Law

puppall@laborlawyers.com | O: (602) 281-3410

201 E. Washington Street | Suite 1450 | Phoenix, AZ 85004

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From: Steve Montoya [mailto:stephen@montoyalawgroup.com]

Sent: Thursday, February 13, 2014 11:03 AM

To: Uppal, Pavneet

Cc: lee.combs@domail.maricopa.edu
Subject: Fwd: Meeting: Cleopatra Martinez

I think you should have been included in this email Payneet.

Stephen Montoya

Montoya, Jimenez & Pastor, P.A.

3200 North Central Ave., Ste. 2550

Phoenix, Arizona

602-256-6718 (phone)

602-256-6667 (fax)

Begin forwarded message:

From: Darlene Newman
<darlene.newman@domail.maricopa.edu>
Date: February 13, 2014 at 10:20:02 AM MST
To: stephen@montoyalawgroup.com
Cc: James Bowers <james.bowers@domail.maricopa.edu>, Lee Combs <lee.combs@domail.maricopa.edu>, Diana Davidson <diana.davidson@domail.maricopa.edu>
Subject: Meeting: Cleopatra Martinez
Reply-To: darlene.newman@domail.maricopa.edu

Good day Mr. Montoya:

Per your email statement to Mr. Lee Combs, Legal Counsel at Maricopa Community Colleges, I have called to set up a meeting with you, Cleopatra Martinez, James "Jim" Bowers, Interim Vice Chancellor for Human Resources and Lee Combs.

After two telephone calls, I thought I would follow-up with this message to schedule this meeting. Below are some suggested dates and times for this meeting. Please let me know what days and times are suitable for you and I will confirm this meeting.

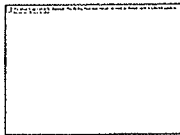
I look forward to hearing from you soon.

Thanks!

- Tuesday, 2/18 @ 2:00 pm
- Wednesday, 2/19 @ 2:00 pm
- Tuesday, 2/25 @ 2:00 pm
- Wednesday 2/26 at 2:00 pm

--

Darlene Newman: Administrative Assistant to the Vice Chancellor for Human Resources
"Leaders instill in their people a hope for success and a belief in themselves. Positive people to accomplish their goals." ~Unknown



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email | darlene.newman@domail.maricopa.edu
website | www.maricopa.edu/hr
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EXHIBIT 39

Subject: FW: Meeting: Cleopatra Martinez

From: Uppal, Pavneet

Sent: Monday, March 3, 2014 1:45 PM

To: darlene.newman@domail.maricopa.edu; Steve Montoya <stephen@montoyalawgroup.com>

Cc: April Roll <april@montoyalawgroup.com>; Diana Davidson <diana.davidson@domail.maricopa.edu>; Lee Combs <lee.combs@domail.maricopa.edu>

Subject: RE: Meeting: Cleopatra Martinez

Thank you Ms. Newman.

Pavneet Uppal

Attorney at Law

puppal@laborlawyers.com | O: (602) 281-3410

201 E. Washington Street | Suite 1450 | Phoenix, AZ 85004

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From: Darlene Newman [<mailto:darlene.newman@domail.maricopa.edu>]

Sent: Monday, March 03, 2014 12:49 PM

To: Steve Montoya

Cc: Uppal, Pavneet; April Roll; Diana Davidson; Lee Combs

Subject: Re: Meeting: Cleopatra Martinez

Mr. Montoya: We confirm this meeting and details are as follows:

- **Date:** Friday, 3/7/2014
- **Time:** 2:00 - 3:00 pm
- **Location:** Jim Bower's Office, Maricopa Community College District Office,
 - 2411 W. 14th Street, Tempe - 6th floor
 - 480-731-8119 (D.Newman)
- Check in with security

On Sat, Mar 1, 2014 at 11:21 AM, Steve Montoya <stephen@montoyalawgroup.com> wrote:
We can do it Friday afternoon.

Stephen Montoya
Montoya, Jimenez & Pastor, P.A.
3200 North Central Ave., Ste. 2550
Phoenix, Arizona
[602-256-6718](tel:602-256-6718) (phone)
[602-256-6667](tel:602-256-6667) (fax)

On Feb 28, 2014, at 9:40 AM, "Darlene Newman" <darlene.newman@domail.maricopa.edu> wrote:

Mr. Bowers and Mr. Combs are available as shown below:

- Friday, March 7
 - 9 - 10 am
 - 2 - 3 pm
 - 3 - 4 pm

Please advise. Thanks!

Darlene Newman
[480-731-8119](tel:480-731-8119)

On Wed, Feb 26, 2014 at 1:52 PM, Steve Montoya <stephen@montoyalawgroup.com> wrote:

Ms. Newman,

Professor Martinez has a serious case of the flu. The earliest that she can meet consistent with my schedule is next Friday.

Does that work for everyone else?

Stephen Montoya
Montoya, Jimenez & Pastor, P. A.
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012
[602-256-6718](tel:602-256-6718) (telephone)

602-256-6667 (fax)

stephen@montoyalawgroup.com

From:

Darlene Newman

[mailto:darlene.newman@domail.maricopa.edu]

Sent: Tuesday, February 25, 2014 8:25 AM

To: Steve Montoya

Subject: Re: Meeting: Cleopatra Martinez

Please give us some dates she will be available.

On Mon, Feb 24, 2014 at 3:58 PM, Steve Montoya <stephen@montoyalawgroup.com> wrote:

Ms. Newman,

Unfortunately, Dr. Martinez has had a sudden medical issue that requires that she meet with her physician tomorrow afternoon.

We consequently need to reschedule her appointment with the District presently scheduled for tomorrow afternoon at 2:00 pm.

Stephen Montoya

Montoya, Jimenez & Pastor, P.A.

3200 North Central Ave., Ste. 2550

Phoenix, Arizona

602-256-6718 (phone)

602-256-6667 (fax)

On Feb 19, 2014, at 8:35 AM, "Darlene Newman" <darlene.newman@domail.maricopa.edu> wrote:

Thank you all for reserving time for this meeting. I am confirming this meeting for Tuesday, 2/25 @ 2:00 pm. If there are any changes, please advise us as soon as possible. As of right now, the meeting will be held in the District Office, 6th floor, Legal Conference Room. (2411 W. 14th Street, Tempe).

Thanks!

Darlene Newman

480-731-8119

On Mon, Feb 17, 2014 at 5:17 PM, Uppal, Pavneet <puppall@laborlawyerscom> wrote:

Ms. Newman,

I represent the District in this matter and Mr. Montoya kindly forwarded your email below to my attention. I am available on:

- Wednesday, 2/19 @ 2:00 pm
- Tuesday, 2/25 @ 2:00 pm

Please let me know once you have scheduled a date for this meeting,

Best regards,

Pavneet Uppal
Attorney at Law

puppal@laborlawyers.com | O: (602) 281-3410
201 E. Washington Street | Suite 1450 | Phoenix, AZ 85004

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From:

Steve Montoya

[mailto:stephen@montoyalawgroup.com]

Sent: Thursday, February 13, 2014 11:03 AM

To: Uppal, Pavneet

Cc: lee.combs@domail.maricopa.edu

Subject: Fwd: Meeting: Cleopatra Martinez

I think you should have been included in this email Pavneet.

Stephen Montoya

Montoya, Jimenez & Pastor, P.A.

3200 North Central Ave., Ste. 2550

Phoenix, Arizona

[602-256-6718](tel:602-256-6718) (phone)

[602-256-6667](tel:602-256-6667) (fax)

Begin forwarded message:

From: Darlene Newman

[<darlene.newman@domail.maricopa.edu>](mailto:darlene.newman@domail.maricopa.edu)

Date: February 13, 2014 at 10:20:02 AM MST

To: stephen@montoyalawgroup.com

Cc: James Bowers [<james.bowers@domail.maricopa.edu>](mailto:james.bowers@domail.maricopa.edu), Lee

Combs [<lee.combs@domail.maricopa.edu>](mailto:lee.combs@domail.maricopa.edu), Diana Davidson

[<diana.davidson@domail.maricopa.edu>](mailto:diana.davidson@domail.maricopa.edu)

Subject: Meeting: Cleopatra Martinez

Reply-To: darlene.newman@domailmaricopa.edu

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"Leaders instill in their people a hope for success and a belief in themselves. Positive leaders accomplish their goals." ~Unknown

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8119/87!

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